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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 574

THE RESCUE ARMY, A CORPORATION, AND CHARLES T. MURDOCK, APPELLANTS,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED OCTOBER 5, 1946.

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[fol. 1] [File endorsement omitted.]

[fol. 2]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

THE RESCUE ARMY, a corporation, and CHARLES T. MURDOCK, Petitioners,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES, Respondent.

PETITION FOR WRIT OF PROHIBITION—Filed November 27, 1943

To the District Court of Appeal of the State of California, Second Appellate District, Division Three:

Your Petitioners above named, by this their verified Petition for a Writ of Prohibition, respectfully set forth the following facts for the issuance thereof:

I

That the petitioner, The Rescue Army above named, is and at times herein mentioned, was a corporation organized and existing under and pursuant to the laws of the [fol. 3] State of California, and now has, and at all such times had its offices and principal place of business at 9405 South San Pedro Street, in the City of Los Angeles, California, and that petitioner, Charles T. Murdock, is a member and officer of said The Rescue Army, and a resident and citizen of the City of Los Angeles, State of California, and of the United States.

II

That said The Rescue Army is a non-profit corporation which engages in religious work and that all of its activities are directed toward and in the interest of said religious work, and that said activities consist of the maintenance of three churches within the above named county in which preaching the gospel of the Christian religion and other religious services including Sunday

schools are regularly conducted, the general distribution of religious literature, the free distribution of bibles to men in the armed forces of the United States, charities incident to said religious activities, and the solicitation from the public of funds which are devoted to said religious activities, all of which said religious activities now are and at all times mentioned herein have been carried on by petitioner.

III

That articles of the constitution of said The Rescue Army, which designates its purposes, reads as follows:

> [fol. 4] "Its object shall be to maintain and support, a nation-wide missionary institution; to conduct religious services by preaching the pure gospel of salvation; to minister to the sick and needy and comfort the fatherless; to rescue the fallen and to do those things needful for the promotion of Christian faith; to carry the gospel to the unchurched masses by maintaining missions or tent meetings among them; to engage and support godly ministers and evangelists to extend this work to all parts of this nation and to foreign countries."

IV

That petitioner herein, Charles T. Murdock, at all times mentioned herein was, and he now is a duly ordained officer of said The Rescue Army and the office which he has so occupied and now occupies is designated "State Commander", with the rank of Lieutenant General in said Army, and that one of the duties of his said office is to solicit, in person or through other army members, donations of money, and for other things of value from the general public to be used in the said religious activities of said The Rescue Army, and that all such money and/or things of value which have been and are received by said Murdock through such solicitations have been and are, and have been given to said The Rescue Army for use in its said religious activities, to which said activities and the duties of his said office, said Murdock is required [fol. 5] by said army to, and he now does, devote and at all times herein mentioned has devoted, his entire time, attention and efforts.

V

That at all times herein mentioned there was and now is in effect in the City of Los Angeles an ordinance, entitled the "Charities and Relief" Ordinance, numbered 77,000, a copy of which said ordinance is attached hereto and marked Exhibit A, and made a part of this petition by reference, which said Ordinance purports to and by its provisions does prohibit the exercise of the right of religious freedom by church and other religious organizations through the solicitation of money, or anything of value, or by the sale thereof, for religious purposes except upon the payment of a license tax or fee to said city, and the issuance of a license or permit by said city to so solicit; that said ordinance forbids and penalizes said solicitations by a class of solicitors which it designates as "Promoters" unless and until said "Promoters" shall have paid to said city a license tax or fee of $25.00 and have posted a bond in the sum of $2,000.00, and said ordinance likewise requires of another class of solicitors a payment of a license tax or fee and the posting of a bond in the sum of $500.00 with the Board of Social Service Commissioners of said City, and said ordinance further forbids any "promoter" or other "solicitor" to solicit without having first obtained a permit or license [fol. 6] so to do from said city, which said permit or license so to do from said city, which said permit or license is designated in said ordinance by the term "Information Card."

VI

That section 44.16 of said Ordinance purports to exempt from the requirements of the payment of said license taxes or fees and the posting of said bonds and the obtaining of said licenses or permits those solicitors whose solicitations are "purely" for "evangelical, missionary or religious purposes"; but petitioners aver that said city and its boards, officers and other agents have at all times herein mentioned construed and applied, and now construe and apply said last named provision to exclude from said exemption all solicitors who do not entirely donate their services and if any portion, however small, of the collections made by said solicitors are to be or are used for charity even though such charity is an essential activity and an integral part of a missionary,

evangelical or religious activity of a church or other religious organization; petitioners aver that each, every and all of the provisions described in this paragraph and in paragraph V of this petition is and they all constitute a prior restraint upon the exercise of the right of religion and as such violate Amendments One and Fourteen to the Constitution of the United States.

[fol. 7] VII

That said Ordinance as construed and applied by said city, its officers, boards and other agents, classifies all religious activities of churches, religious associations and other religious organizations as charities and as being for charitable purposes, and thereby subjects said religious organizations to all of the said licensing and permit requirements of said ordinance; that said ordinance provides that said city, through its Department of Social Service may "approve" such "charitable associations" as it deems are entitled to such approval and thereby exempt them and their promoters and solicitors from the provisions of said ordinance hereinbefore described and from the necessities of time-consuming delays in investigations and other procedural requirements of said ordinance, and said ordinance, section 44.09 thereof, provides that said Board of Social Service Commissioners may by "express written permission" allow any person to solicit contributions by means of a box or receptacle, upon any street, sidewalk or way, or in any public park, or in any publicly owned or controlled place, although without such "express written permission", all persons are forbidden by said section to so solicit as aforesaid;

Petitioners aver that said last described provision of said section 44.09 and of said provision authorizing said Department of Social Service to approve such charitable associations as it deems entitled thereto, arbitrarily [fol. 8] grants and permits to be granted privileges and immunities to a portion of a class while denying the same to others and that said provisions authorize the granting of special privileges to certain persons which are not given to others similarly situated, and are thus violative of Article I, section 21 of the Constitution of California and of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution.

VIII

That said Ordinance as construed and applied by said City, its boards, officers and other agents, authorizes said Department of Social Service and its Secretary to investigate and determine whether a church or other religious organization is religious or charitable, and whether the purpose to solicit for which any person makes application for a license or permit is religious or charitable, and to grant or deny such application according to such determination of said Department or its said Secretary, and that said Department and its said Secretary have, heretofore, made investigation of petitioners herein and, although said petitioners have at all times herein mentioned informed said Department and said Secretary and said Board and have stated to each of said city agencies that said petitioners, and each of them, are engaged in religious activities only and solicit money and other things of value in support of said The Rescue Army and [fol. 9] its activities as herein described, said Department and its said Secretary have determined that said solicitations are not for said or any religious purposes and have classified said purposes as for charity, only and petitioners aver that said Ordinance as so construed and applied constitutes an infringement of petitioners' right to religion, whose free exercise is guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

IX

That said sections 44.09 and 44.12 are not, and neither of them is, severable from other sections of said Ordinance, or from the whole body thereof, but are dependent upon and interdependent with other sections of said Ordinance, and derive their pretended legality solely from the fact that they are a part of a purported regulatory law enacted in the exercise of governmental power.

X

That the free right and license to solicit money to be used in religious activities, and especially in each of the religious activities in which petitioners engage and have engaged as above set forth, has been and is given, granted and guaranteed unconditionally and forever to

all churches and religious organizations and to all persons who solicit for said purposes or organizations, and in particular to said The Rescue Army and to said Murdock, by the First and the Fourteenth Amendments to the Constitution of the United States, and that even [fol. 10] though regarded as for charitable purposes as said city, its said Board and Commission, officers and agent, have classified the said solicitations of said Murdock as above set forth, said Ordinance is, and all of the provisions of said Ordinance named in paragraph VII of this petition are violative of said last named amendment and of Article I, section 21 of the Constitution of California, and the equal protection of the laws clause of the said Fourteenth Amendment.

XI

That on the 12th day of January, 1942, the City of Los Angeles, and Ray L. Chesebro as City Attorney of said City, caused a complaint to be sworn to and filed in the Municipal Court of the said City of Los Angeles in and by which said [redacted]dock was charged with having violated sections 44.09 and 44.12 of said Charities and Relief Ordinance in that, as it is charged in said complaint, Court I thereof, said Murdock solicited contributions, and in Court II thereof, that said Murdock had no permit or Information Card, and failed to show the same to a person solicited by said Murdock for a contribution, which complaint is filed in said Municipal Court as Criminal No. 169931.

That forthwith upon the filing of said complaint in said Municipal Court as aforesaid, said respondent caused to be and there was issued by said last named Court a warrant of arrest directed to be served upon said Murdock, which said warrant of arrest was predicated upon said complaint, [fol. 11] and the said warrant of arrest was thereafter served upon said Murdock by a police officer of said City and said officer then and thereupon took said Murdock into custody; and such proceedings were thereafter had in said Municipal Court in said matter and cause that the same was set for trial in said Municipal Court in Division Eight thereof on the 1st day of February, 1943, and upon said trial, said Murdock was convicted upon both counts and was sentenced to pay a fine, or in lieu of said payment to serve in the jail of said city; that thereafter said Murdock duly

appealed from said judgment and sentence to the Superior Court of Los Angeles County, and upon said appeal said judgment and sentence was duly reversed by said appellate court;

That said City and said City Attorney thereupon caused said matter and cause to be retried in said Municipal Court on May 11, 1943, and said Murdock was again convicted and sentenced as before; that said Murdock again appealed and said last imposed sentence was reversed by said Superior Court, that thereafter, said City and said City Attorney caused said matter and cause to be reset for trial in said Municipal Court on November 30, 1943.

XII

That prior to the filing of said complaint as above set forth, respondent had filed a complaint against James L. Carles, one of the solicitors for said the Rescue Army, in which complaint, the same charges were made as in the [fol. 12] complaint against said Murdock, but that after a trial by jury, said Carles acquitted.

XIII

That said respondents and each of them claim that they have a right to compel petitioners to obey all of the provisions of said Ordinance number 77,000, and especially of said sections 44.09 and 44.12 thereof, and to arrest said Murdock and all other solicitors for said The Rescue Army who fail to comply fully with any and all of the provisions of said Ordinance, and, in particular with said sections 44.09 and 44.12, and said respondents have threatened and now threaten to continue to arrest said Murdock and any other person who solicits contributions of any kind for said The Rescue Army from any person in violation of either of said last named sections who otherwise fails to comply with any of the provisions of said Ordinance.

XIV

That pursuant to said guarantees contained in Articles One and Fourteen of said Federal Constitution, and in reliance thereon, and not otherwise, said The Rescue Army was incorporated for said religious purposes set forth in its articles of incorporation as aforesaid, and thereafter solicited and received from its members and the general

public substantial sums of money and other things of value with which to constitute, organize, equip and carry on its said religious activities in its churches and in reliance [fol. 13] upon said guarantees, and not otherwise, said the Rescue Army used said money and the proceeds from said other things of value to organize and equip its said churches and to provide articles and things with which to conduct and to carry on its religious activities hereinbefore described and enumerated.

XV

Petitioners aver that their money and other things of value received by said The Rescue Army, through solicitations of said Murdock provided, and at all times herein mentioned have provided, a substantial part of the funds which support and maintain and are necessary to the maintenance of said The Rescue Army and its said religious activities and that if said Murdock is compelled by said respondent to cause said solicitations, said religious activities will be greatly impaired and reduced, and said The Rescue Army will be forced to partly abandon the same and that great and irreparable injury will result to said army and to all of the religious work which it conducts as above set forth.

XVI

That petitioners allege that the evidence presented by the prosecution in each of said prior trials of said prosecution against said Murdock, was the same, and that if said matter should be tried again, no other or different evidence is available or could be produced; that said Municipal Court threatens to proceed with a third trial of said Charles T. [fol. 14] Murdock upon said charges, on the date set for said trial, to wit, November 30th, 1943, and will, if consistent with its former decision, find said Murdock guilty, but without authority, and in excess of its jurisdiction in the matter and contrary to the First and the Fourteenth Amendments to the Federal Constitution and to Article I, Section 21 of the Constitution of California, find the said Murdock guilty on both counts of said complaint, and will thereby compel said Murdock to again appeal to said Superior Court.

XVII.

That the said corporation, The Rescue Army, is a party in interest and a party beneficially interested, and that it has property rights and financial interests in the outcome of the said prosecution against said Murdock which is sought to be enjoined as more fully appears from allegations in that behalf herein above set forth.

XVIII

That your petitioner, Charles T. Murdock, is the party beneficially interested in these proceedings and that other parties in interest and whose interest will be directly affected by this proceeding are the City of Los Angeles, a Municipal corporation and Ray L. Chesebro, the City Attorney of said City, as the prosecutor in said Municipal Court action against said Murdock.

XIX

That petitioners have no plain, speedy or adequate [fols. 15-16] remedy at law and have no remedy otherwise than through preventive relief by this court.

XX

That heretofore petitioners presented to the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles a petition for a Writ of Prohibition in the instant matter in which petition the same averments were made and the same cause of action set forth as in the petition herein, and that on November 26, 1943, said Appellate Department refused to issue said writ and denied said petition.

Wherefore, petitioners pray that an alternative Writ of Prohibition be issued commanding said Municipal Court of the City of Los Angeles to refrain from trying said matter and cause in which said Charles T. Murdock is defendant or from taking any action therein until the further order of this Court, and that said Superior Court be directed to show cause before this Court, and that said Superior Court be directed to show cause before this Court, at a specified time and place, why it should not be permanently restrained from taking any further proceedings, or making any other orders affecting peti-

tioners herein, based upon the allegations or charges of said complaint in said case against said Charles T. Murdock, other than to dismiss said case.

Robert H. Wallis, Attorney for Petitioners.

[fol. 17] *Duly sworn to by E. L. Wheeler jurat omitted in printing.*

[fol. 18] EXHIBIT "A" TO PETITION

Charities

L. A. Municipal Code—Ord. No. 77,000

As Amended by Ordinance Nos. 80,920, 81,618 and 84,121

Chapter 4

Article 4—Charities and Relief

Sec. 44.01. Definitions:

For the purposes of this Article, the following words are defined and shall be construed as hereafter set forth unless it shall be apparent from the context that they have a different meaning:

"Board" shall mean the Board of Social Service Commissioners;

"Charitable" shall include the words philanthropic, social service, benevolent, patriotic, either actual or purported;

"Contribution" shall include the words alms, food, clothing, money, property or donations under the guise of a loan of money or property;

"Department" shall mean the Department of Social Service;

"Person" (Added by Ordinance No. 80,920, approved March 1, 1939) shall be construed as defined in Sec. 11.01 of this Code.

"Promoter" (Added by Ordinance No. 80,920, approved March 1, 1931) shall mean any person who for [fol. 19] pecuniary compensation or consideration received, or to be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable

association, corporation or institution, or conducts, manages or carries on or agrees to conduct, manage or carry on or is engaged in the business of or holds himself out as engaged in the business of conducting, managing or carrying on any drive or campaign for any such purpose; provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article.

"Solicitation" shall mean and include the following:

(1) Any oral or written request;

(2) The distribution, circulation, mailing, posting or publishing of any handbill;

(3) The making of any announcement to the press, over the radio, by telephone or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance drive, entertainment, exhibition, exposition, party, performance, picnic, sale or social [fol. 20] gathering, which the public is requested to patronize or to which the public is requested to make a contribution for any charitable purpose connected therewith;

(4) The sale of, offer or attempt to sell, any advertisement, advertising space, book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket or other thing in connection with which any appeal is made for any charitable purpose or the name of any charity, philanthropy or charitable association is used or referred in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will go or be donated to any charitable purpose or association.

A solicitation as defined herein shall be deemed completed when made, whether or not the person making the

same receives any contribution or makes any sale referred to in this Article.

Sec. 44.02. Powers of Board:

The Board shall have the following powers:

(a) To publish results of any investigation provided for or authorized in Section 44.03, subdivisions (a), (b) and (c) of this Article;

(b) To give such publicity to any such results by such means as may be deemed best to reach the general public and persons interested;

[fol. 21] (c) To waive the whole or part of any provisions of Sections 44.03, 44.05, 44.06, 44.10, 44.11, 44.12, 44.13, 44.15, and 44.02 excepting this sub-section, of this Article for the purpose of meeting any extraordinary emergency or calamity;

(d) To request return of Information Cards to the Department upon completion of solicitation for which they are issued or at the expiration of the period for which they are valid;

(e) Upon receipt of additional information which, in the opinion of the Board, shall render incorrect any statement set forth in any such Information Card, the Board shall recall every such Information Card and amend or correct the same or issue in lieu thereof a new Information Card amended or corrected in accordance with such additional information, and that upon receipt of notification to return any Information Card for amendment or correction or new issue, as above provided, the association or person who filed the Notice of Intention for the solicitation for which any such card was issued must present such recalled Information Card to the Department within 48 hours from the time of receipt of said notification;

(f) To waive all conditions of this Article upon application of person filing Notice of Intention, in respect to Information Cards and filing copies of written authorization when a campaign or drive for raising funds for any charitable purpose is given general publicity through the [fol. 22] press or otherwise, and when more than twenty-five (25) persons serve as solicitors without compensation, if it shall be proved to the satisfaction of the Board that the publicity concerning the solicitation fully informs

the general public and the persons to be solicited as to the facts required to be set forth on the Information Card.

Sec. 44.03. Powers of Department:

The Department shall have the following powers:

(a) To investigate the allegations of Notice of Intention, or any statement or reports;

(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made;

(c) To investigate at any time the methods of making or conducting any such solicitation;

(d) To issue to all solicitors Information Cards which cards shall show:

(1) That same is issued as information for the public and is not an endorsement;

(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;

(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;

(4) Any additional information obtained as shall in the [fol. 23] opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made;

(e) To charge a fee for supplying Information Cards, at the rate of four cents per card; provided that when more than twenty-five cards are issued at one time for the same solicitation, the fee for all such cards in excess of twenty-five shall be one cent per card.

Sec. 44.04. Fraud—Solicitation:

No person shall make or perpetrate any misstatement, deception or fraud in connection with any solicitation of any contribution for any charitable purpose.

Sec. 44.05. Charity Solicitation—Notice of Intention:

No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within

the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

(a) The purpose of the solicitation and use of the contribution to be solicited;

[fol. 24] (b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless or from what funds such expenses are payable.

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer [fol. 25] of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article

and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation.

Sec. 44.06. Charity—Solicitor's Agreement—Notice of Intention—Additional Information:

There shall be filed with the Department with such Notice of Intention a statement of any agreement made with any agent, solicitor, promoter, manager or conductor of such solicitation together with a copy of each agreement which may be in writing. Within twenty-four hours after any change in any such agreement or the making of any new or further agreement, a true copy of such change or agreement, if in writing, or if not, written details thereof shall be filed with the Department. Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however, that the Board, [fol. 26] for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or on any association, by at least two officers of such association and shall be open to the inspection of the public.

Sec. 44.07. Name of Solicitor:

No person shall use in soliciting or give to any person whomsoever, either a fictitious name or an alias or any other than his full, true and correct name, or make any such solicitation without at the time of giving to the person solicited his own full, true and correct name, nor shall he impersonate any other person in making such solicitation.

Sec. 44.08. Charitable Associations—Accounting System —Maintenance of:

No person shall solicit any contributions for or on behalf of any charitable association unless such association is maintaining a system of accounting whereby all donations to it and all disbursements made by it are entered upon the books or records of its treasurer or other financial officer.

Sec. 44.09. (As amended by Ordinance No. 84,121, approved Feb. 5, 1941) Solicitation—Boxes—Receptacles:

(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any [fol. 27] public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by the express written permission of the Board.

(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box of receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a "notice of intention" as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article.

Sec. 44.10. Charitable Associations—Permission by to Solicit:

No person shall use the name of any association in charge of control of any charitable activity in any solicitation without having written permission from two of the officers of such association, to use its name or the name of or reference to such charitable activity, which written permission must be for a specific event or a specified period of time and a copy of such permission must be filed with the Department prior to any such use.

Sec. 44.11. Charitable Associations—Solicitor—Authorization, Exhibition of:

[fol. 28] No person shall solicit in the name of or on behalf of any charitable association unless such solicitor has:

(a) Written authorization of two officers of such association, a copy of which shall be filed with the Department; and which authorization and copy shall each bear a specimen signature of the solicitor; such written authorization shall expressly state on its face the period for which it is valid which shall not exceed ninety days from the date issued;

(b) Such authorization with him when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the Department.

Sec. 44.12. Solicitation—Information Card:

No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person solicited or presents it to said person for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited.

Sec. 44.13. Solicitation—Radio, Telephone, Telegraph:

No person shall solicit any contributions by printed matter or published article, or over the radio, telephone or telegraph, unless such publicity shall contain the data and information required to be set forth in the Informa- [fol. 29] tion Card. Provided, that when any solicitation is made by telephone, the solicitor shall present to each person who consents, or indicates a willingness to contribute, prior to accepting a contribution from said person, such Information Card or a true written copy thereof.

Sec. 44.14. Solicitations—Report—Time—Expenses—Uses:

Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed. Every such report shall be made on forms to be furnished by the Department, and signed by the persons or associa-

tion filing or obligated to file the Notice of Intention and such report, if made by any such association, shall be signed by at least two officers thereof. Provided, that when any such solicitation is made by any such association such report need be filed only by such association and not by an individual solicitor engaged in any such solicitation.

Sec. 44.15. Contributions—Receipt, Contents of:

[fol. 30] No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:

(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for.

Provided, however, that no receipt need be given or tendered if donation of money is made by placing of the same in a locked receptacle, of a kind previously approved by the Board, in such manner that it is impracticable to ascertain either the amount donated or the name of the donor, and if an inscription shall be conspicuously attached to such receptacle containing in legible writing a copy of such Information Card issued by the Department and the statement required to be set forth in the receipt hereinbefore in this Section referred to, except the state-[fol. 31] ments regarding such information card, and if such receptacle bears a number or other mark of identification, and if a written list showing by number the location or name of the solicitor in charge of each receptacle, if there be more than one such receptacle shall have been previously filed with the Department. Provided, further, that no receipt need be given for any donation of money in an amount less than $1.00.

Sec. 44.16. Certain Provisions not Applicable, When:

The provisions of this Article, except Sections 44.01 and 44.04, shall not be applicable to any solicitation made upon premises owned or occupied by the association upon whose behalf such solicitation is made, nor to any solicitation for the relief of any individual specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected, without any deduction whatever, shall be turned over to the named beneficiary, nor shall they be applicable to any association soliciting contributions solely from persons who are members thereof at the time of such solicitation, nor shall they be applicable to solicitations made solely for evangelical, missionary or religious purposes. Provided, however, that in any case, where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the [fol. 32] Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case.

Sec. 44.17. Soliciting from Vehicles:

No person shall park or stand any vehicle on any street with the Central Traffic District, as said district is defined in Section 80.00, for the purpose of soliciting funds to any charitable institution, or otherwise.

Sec. 44.18. (Added by Ordinance No. 80,920, approved March 1, 1939) Telephone Solicitations.

(a) No person shall for pecuniary compensation or consideration conduct or make any solicitation by telephone for or on behalf of any actual or purported charitable use, purpose, association, corporation or institution.

(b) The provisions of Subsection (a) hereof shall not apply to any communication by telephone between persons personally known to each other.

Sec. 44.19 (Added by Ordinance No. 80,920, approved March 1, 1939)

[fol. 33] (1) Promoters.

No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without license from the Board so to do.

(2) Application.

To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application, the applicant shall set forth, in addition to such information as may be required by the Board:

(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter.

[fol. 34] (3) Bond.

(a) (As amended by Ordinance No. 81,618, approved Sept. 15, 1939). At the time of so filing with the Board an application for such license the applicant shall file and thereafter maintain with the Board a good and sufficient bond in the aggregate sum of Two Thousand Dollars ($2,000) running to the City of Los Angeles for the use and benefit of interested persons and parties, executed by the applicant and by two or more responsible sureties, or a surety company authorized to do business in the State

of California, to be approved by the Board. The total aggregate liability on said bond shall be limited to the payment of Two Thousand Dollars ($2,000). Said bond shall be conditioned upon the strict compliance, by the Principal, with the provisions of this Article and the payment of any direct pecuniary loss sustained, through any act of grand or petty theft on the part of the Principal, by any donor or by any person on whose behalf the funds or personal property were solicited or received by the Principal.

(b) Said bond shall remain in force and effect until said bond and undertakings in the solicitation of contributions by the promoter is cancelled by the sureties. The sureties may cancel said bond and be relieved of further liability thereunder by delivering thirty days' written notice to the Board. Such cancellation shall not affect any liability incurred or accrued thereunder prior to the termination of said thirty (30) day period.

[fol. 35] (c) Any person who sustains any injury covered by said bond, may in addition to any other remedy that he may have, bring an action in his own name upon said bond for the recovery of any damage sustained by him.

(d) Upon such action being commenced, such bond shall not be void upon first recovery thereon, but may be sued upon, from time to time until the whole of such penalty shall be exhausted. The Board may, in its discretion, require the filing of a new bond, and immediately upon the recovery in any action on such bond, and upon failure to file the same within ten (10) days in either case, the Board shall forthwith suspend such promoter's license to solicit.

(e) The time within which any action may be brought against a surety upon any bond filed hereunder may, by express provision of the bond to that effect, be limited to a period of two (2) years from and after the discovery, by the person aggrieved, of the act or default complained of.

(4) Fee.

For filing such application the applicant shall pay a fee of $25.00 to the Board.

...

(5) Investigation.

The Board shall examine such application and shall make such further investigation of the applicant and its or his affairs as the Board shall deem advisable. If from such examination the Board shall be satisfied:

(a) That the applicant is of good character and reputa-
[fol. 36] tion, or

That every managing officer or agent of the applicant if the applicant is a corporation, is of good character and reputation, or if the applicant is an unincorporated association, firm or partnership, each member thereof is of good character and reputation.

(b) That applicant has sufficient financial responsibility to carry out the obligations incident to any solicitation such applicant may make within the City of Los Angeles as such promoter and that all of the statements made in such application are and each of them is true and that neither the applicant nor any officer, agent or member of the applicant has violated any of the provisions of this Article or has engaged in any fraudulent transaction or enterprise, and that the applicant intends to conduct its business fairly and honestly, the Board shall issue to the applicant a license to solicit as a promoter within the City of Los Angeles, contributions; otherwise, the Board shall deny the application and refuse to issue a license, and shall notify the applicant of the decision of the Board.

Provided, however, that if the only ground for such refusal or denial is such that it does not substantially affect applicant's honesty and integrity and if the inability of the applicant to meet any requirement will not in any way interfere with a proper performance by the applicant of his duties as such promoter, the Board may, in its dis-
[fol. 37] cretion, waive such ground and grant the application; this proviso relates only to paragraphs (a) and (b) of this subsection.

(6) Revocation.

All licenses issued hereunder shall be subject to the condition that the applicant thereafter shall cease and desist from acting as a promoter within said City of Los Angeles when ordered so to do by the Board if the Board finds after a hearing, upon notice as provided in Section 22.02 of this Code, that any act or omission of such promoter or his

agents or employees in making any solicitation or in the conduct of the business of promoter within the City of Los Angeles is unfair, unjust, inequitable or fraudulent. The Board must suspend or revoke any such license if, after hearing upon notice, the Board shall find the existence of any of the grounds hereinabove enumerated for the denial of an application for a promoter's license; provided, however, that such suspension or revocation shall be discretionary with the Board if the only ground for such revocation is such that it does not affect the licensee's honesty and integrity, or his ability properly to perform his duties as a promoter.

(7) Termination:

Every such license shall terminate or expire at the end of the year terminating on the 30th day of June in which such license is issued.

(8) Funds.

No promoter shall commingle any contribution with the [fol. 38] promoter's own funds or property, or fail at any time to maintain and keep all contributions separate and apart from the promoter's own funds or property.

(q) (Added by Ordinance No. 81,618, approved Sept. 15, 1939) Solicitors:

(a) It shall be unlawful for any promoter to cause or permit any person for pecuniary compensation or consideration received or to be received by such person to solicit or receive on his behalf or at his instigation, under his direction or control or in his employment, any contribution unless such person shall be registered as a solicitor by the Board.

(b) No person shall be so registered as a solicitor unless he shall first appear personally before the Board and furnish satisfactory proof that he is a person of good moral character, that his reputation for honesty is good, and unless he first file with the Board and thereafter maintain a bond satisfactory to the Board in the sum of Five Hundred Dollars ($500.00), conditioned for the payment of any direct pecuniary loss which may be sustained by the promoter, by any donee, or by any person on whose behalf any contribution was solicited or received, through any act of grand or petty theft, committed by such person.

(c) The provisions of paragraphs (b), (c), (d) and (e) of subsection (3) above shall apply to bonds filed pursuant to this subsection.

(d) The Board shall collect a fee of One Dollar ($1.00) for each such registration.

[fol. 39] (g) The registrant must notify the Board in writing of any change of address and if the registrant be employed or engaged by more than one promoter, he must inform the Board in writing of such fact and of any subsequent termination or change of employment.

Pawn Brokers—Second Hand Dealers
L. A. Municipal Code—Ord. No. 77,000

As Amended to and Including Ordinance No. 84,732

Sec. 24.01. Pawn Brokers, Second Hand Dealers, Junk Dealers, Collectors.

(a) (As amended by Ordinance No. 79,314, approved March 3, 1938)

Definitions. For the purpose of this Section the following words shall mean:

"Junk Dealer" shall mean a person having a fixed place of business in this City who goes from house to house or from place to place gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.

"Junk Collector" shall mean a person having a fixed place of business in this City and engaging in, conducting, managing or carrying on the business of buying, selling or otherwise dealing in, either at wholesale or retail any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.

"Pawnbroker" shall mean a person engaged in, conduct-[fol. 40] ing, managing or carrying on the business of pawnbroking, or the business of loaning money for himself or for any other person upon personal property, or the business of purchasing articles of personal property and reselling or agreeing to resell such articles to the vendors or their assignees at prices agreed upon at or before the time of such purchase.

"Pawn Shops" shall mean any room, store, or place in which the business of a pawnbroker is carried on or conducted.

"Secondhand Dealer" shall mean a person engaging in, conducting, managing or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise.

None of the provisions of this Section shall apply to auto wreckers, dealers in used motor vehicles, or to secondhand book dealers.

(Added by Ordinance No. 83,898, approved December 26, 1940) "Trade-ins"—Tires and Batteries. The acceptance, sale or disposal of used automobile tires or automobile batteries taken in part payment for new tires or batteries shall not be deemed to constitute the doing of any business defined in this subsection.

(b) Permit Required. No person shall engage in, conduct, manage, carry on or deal in any business mentioned in subsection "a" of this Section without first applying for and receiving a written permit from the Board as hereinafter provided.

[fol. 41] (c) Requisites of Permits.

(1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsection "a" of this Section shall file an application in writing with the Board specifying by street and number the place where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be signed by the applicant and shall contain his residence address.

(2) Before receiving an application for any permit the Board shall require the payment of such fees as are hereafter specified.

(3) Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year.

(4) Persons operating under the provisions of this Section shall be required to secure an annual renewal of such permit commencing January 1st of the succeeding year in which such permit was granted.

(5) No person holding a permit to conduct, manage, carry on or deal in any business mentioned in subsection "a" of this Section shall buy, sell or otherwise deal in [fol. 42] secondhand jewelry, precious stones, precious metals (including old gold), watches or other similar secondhand merchandise without first applying for and receiving a special permit therefor from the Board in the manner provided in this Section for securing ordinary permits.

(d) Fees. The Board shall charge the following fees:

(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10;

(2) Applications for special permits, the sum of $50.00;

(3) Applications for annual permit renewal, the sum of $25.00;

(4) Applications for changing location of place of business for which a permit has been granted, the sum of $10.00;

(5) Change of ownership, the sum of $10.00, to be applicable only in cases where the new owner is already operating under a permit issued pursuant to provisions of this Section.

(e) Compliance with Laws:

(1) The Board shall not grant any permit provided for in this Section to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought.

(2) Persons applying for or obtaining permits under the provisions of this Section shall comply with the provisions of this Section.

(f) Revocation of Permits. Any permit issued under [fol. 43] the provisions of this Section may be revoked or suspended upon the grounds provided for in this Section:

(1) Grounds. If persons holding permits under the provisions of this Section shall violate any of the provisions of this Section or any provision of any other ordinance, or any law relating to or regulating any such business, or shall conduct or carry on such business in an

unlawful manner, the Board, in addition to any other penalties provided by this Code, shall revoke such permit issued to such person;

(2) Procedure. Permits granted pursuant to this Section shall be revoked only in the manner provided in Section 22.02 of this Code;

(3) Reissuance of Revoked Permit. No permit shall be granted to any person to conduct, manage, carry on or deal in any business mentioned in subsection "a" of this Section whose permit has been revoked by the Board until six (6) months have elapsed after such revocation.

(g) Report of Purchases.

(1) Persons described in subsection "a" of this Section shall secure blank report forms from the Chief of Police. Such reports shall be made out and delivered to the Chief of Police each day before 10 A. M. and shall contain the following data:

(a) A full, true and complete report of all goods, wares, merchandise or things received on deposit, pledged, purchased or received during the day preceding the filing of such report.

[fol. 44] (b) The hour of the day such article was received, pledged or purchased.

(c) The true name and address of the party making the sale, delivery or pledge as nearly as the same is known to or can be ascertained by such person together with a description of such party which shall include his height, age, sex, complexion, style of dress, color of mustache, if any, and if lacking, such fact shall be noted.

(d) The number of the pawn ticket if a pledge is involved, and the amount loaned or pledged.

(e) Each article pledged, received or purchased shall be described. If such article is engraved or contains any settings, the description thereof shall include such number, figure, word or initial engraved thereon and shall show the kind of number of settings.

(2) Such blank report forms shall bear a caption providing blank spaces in which shall be written or printed, the date of such report, the name and place of business of the person making the same and the hour of day when

the same is received by the Chief of Police. Such forms shall be so printed and subdivided as to contain spaces with proper captions for the information required by the provisions of this subsection. A copy of this Section shall be printed upon the back of each such blank form.

(3) Every junk dealer or persons engaged in the business of purchasing scrap metals for the purpose of [fol. 45] reselling, smelting or refining such metal must comply with provisions of subdivision (1) of this subsection, except that where purchases are made from a junk collector in lieu of the description required in subsection "1(c)" of this subsection the true name and city license number of such junk collector shall be sufficient.

(h) Record of Purchases. Persons defined in subsection "a" of this Section shall keep a complete record of all goods, wares, merchandise and all things pledged to or purchased or received by him, which record shall contain all of the matters required to be shown in the reports referred to and described in subsection "g" of this Section. Such records of all articles pledged, purchased or received by such persons shall be open at all times during business hours to the inspection of any member of the Police Department.

(i) Filing of Reports. The Chief of Police shall file in a secure place in his office all reports and records received pursuant to the terms of this Section, and the same shall be open to inspection only by members of the Police Department or upon an order of a court of competent jurisdiction made for that purpose. Every report and record required by the terms of this Section to be filed or kept shall be written or printed in a clear and legible manner entirely in the English language.

(j) Signs. Persons defined in subsection "a" of this Section shall maintain on the premises where said business is located, a sign plainly printed in the English [fol. 46] language of sufficient size so that the same may be easy to read from the sidewalk in front of said place of business. Such sign shall state the business in which such person is engaged. If said business is located in an office building the sign shall be placed on the door of said office. If the business is located in a department of any building the sign shall be placed at the entrance to said department.

(k) Sale of Goods by Dealers.

(1) Pawnbrokers or secondhand dealers shall not sell or otherwise dispose of any article or thing within twenty-one (21) days after such article or thing has been purchased or received by such pawnbroker or secondhand dealer.

(2) Junk dealers or junk collectors shall not sell or otherwise dispose of any article or thing within three (3) days after such article or thing has been purchased or received by such junk dealer or junk collector.

(3) Junk dealers or other persons engaged in the business of purchasing scrap metals for the purpose of reselling, smelting or refining the same, shall retain and keep in a separate place on their premises the entire purchase of each day. Each day's purchase shall be kept in such place in its original condition for a period of three (3) days after the purchase or receipt thereof, and shall at all times be open to the inspection of the Police Department.

(1) (As amended by Ord. No. 87,342, approved Jan. 21, 1943).

Hours of Business. No person operating, managing, or fol. 47] carrying on any business defined in Subsection (a) hereof shall accept any pledge, or loan money upon personal property, or purchase or receive any article, or carry on or transact such business in any manner during the hours or days hereinafter specified, nor shall any person carry on or transact any business of whatever character, or buy or sell any article new or used, at any place of business for which a junk dealer's permit, a pawnbroker's or pawnbroker's or pawnshop permit, or a secondhand dealer's permit is issued, during any of the following hours or days, to-wit:

(1) Between 6:00 o'clock P.M. and 8:00 o'clock A.M. on any day from Monday to Friday, inclusive.

(2) Between 7:00 o'clock P.M. Saturday and 8:00 o'clock A.M. of the following Monday, except, however, that any such place of business may be kept open between 7:00 o'clock P.M. and 9:00 o'clock P.M. on Saturday, provided that the only business done therein during such

overtime hours be that of selling goods, wares and merchandise or other personal property;

(3) On any of the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas;

Except, however, that from December 14th to December 24th inclusive, excluding Sundays, any such place of business may be kept open until 10:00 P.M., provided the only business done therein during such overtime hours be [fol. 48] that of selling goods, wares and merchandise, or other personal property.

(m) Overlapping Businesses. If any person shall engage in, conduct, manage or carry on at the same time more than one of the businesses defined in subsection "a" of this Section such person shall be deemed to be engaging in, conducting, and carrying on each such business separately and apart from the other business; and such person shall comply in all respects with the provisions of this Section relating to such business and no person shall fail, refuse or neglect otherwise so to do.

(n) Compliance with Section. No person engaging in, conducting, managing or carrying on any of the businesses defined in subsection "a" of this Section shall fail, refuse or neglect to file any report in the form, in the manner, at the time and otherwise in all respects in accordance with the requirements of this Section; or fail, refuse or neglect to keep records in the form and manner required by this Section; or fail, refuse or neglect to exhibit to a member of the Police Department immediately upon demand for inspection, any record of any goods, wares, merchandise, articles or things pledged to, or purchased or received by such person.

(o) Exemptions.

(1) (As amended by Ord. No. 82,638; appr. Apr. 3, 1940).

The provisions of subsection (g) shall not apply to the receipt or sale of a secondhand article by person who receives or purchases such article from any other person [fol. 49] when such other person has made the required report to the Chief of Police and shall have held the articles for the length of time as provided in subsection (k) hereof.

(2) The provisions of subsection (g), (h), and (k) of this Section shall not apply to the purchase or sale by junk dealers or junk collectors of any rags, bottles, other than milk or cream bottles, secondhand sacks or bags, other than cement sacks or bags, barrels, cans, shoes, lamps, stoves or household furniture with the exception of all musical instruments, typewriters, accounting machines, adding machines, check writing machines, comptometers or other similar equipment or the purchase or sale of sacks, bags, or rags other than cement sacks or bags.

(p) (Added by Ord. No. 83,646, approved November 18, 1940) Claims to Possession of Stolen Property.

(1) In all cases where a claim is made to property pawned with or sold to a person claiming to be the owner thereof and asserting that the property was stolen, the Board shall, after a hearing upon notice, determine the validity of such claim and the immediate disposition which should be made as to the possession of the claimed property, as hereinafter provided.

(2) If the Board shall determine that such property was stolen, that the claimant is the owner thereof, and that there is no collusion between the claimant and the person by whom such property was stolen, the Board shall direct that such property be returned forthwith to [fol. 50] the claimant without compensation of any kind being paid therefor.

(3) In the event such direction be disobeyed, the permit under which such pawnbroker, secondhand dealer, junk collector or junk dealer is permitted to conduct his said business may be revoked or suspended by the Board without further hearing.

(4) The Board may designate any member of the Police Department to hear the evidence at any or all hearings that may be held hereunder, and to report his findings thereon to the Board; but in all cases, the Board shall determine the disposition of the property.

(5) If, prior to the determination by the Board upon any claim made hereunder, an action at law is brought by or against the person in possession of the property to establish the ownership of, or the right to possession of, the property, the Board shall upon notice thereof suspend proceedings upon the claim.

[fol. 51] IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

[Title omitted]

POINTS AND AUTHORITIES IN SUPPORT OF PETITION

1. It is Settled Law That an Attempt to Enforce a Law Making Certain Acts a Criminal Offense Will be Enjoined if The Law is Invalid and Its Enforcement Will Injure Plaintiff's Property Rights. (14 Cal. Jur. p. 213.)

2. *Where a Court Is Proceeding to a Trial For The Violation of a Void Ordinance Or Unconstitutional Law Prohibition Is the Proper Remedy to Prevent.*

Douglas v. Jeanette, Adv. Ops. Vol. 87, p. 856.
Monterey Club v. Superior Court, 48 Cal. App. (2d) 131.
Brock v. Superior Court, 12 Cal. (2d) 605.
Brock v. Superior Court, 11 Cal. (2d) 682.
Wheeler v. Herbert, 152 Cal. 228.
[fol. 52] Arfsten v. Superior Court, 20 Cal. App. 269.
Ex Parte Hayter, 16 Cal. App. 225.
Scofield v. City of Los Angeles, 120 Cal. App. 240.

3. Prohibition Will Lie To Prevent a Retrial Of a Criminal Case Where it Appears That the Court is Without Jurisdiction to Try and Convict.

Oliver v. Superior Court, 92 Cal. App. 94.
Huntington v. Superior Court, 5 Cal. App. 288.

4. A State Cannot Impose a Charge for the Exercise of The Right of Religion Which Privilege and Right is Granted by the Federal Constitution.

Murdock v. Penn., 87 L. ed. 827.
Cantwell v. Connecticut, 310 U. S. 296.
In re Darte, 172 Cal. 47.

5. The State Can No More Exact a License Fee or Tax From a Solicitor for a Charitable Activity than for the Exercise of the Right of Religion. Both are Protected by the Constitution.

In re Darte, 172 Cal. 47.

6. The right to Engage in Religious or Charitable Activities is not the Subject of State Regulation, although a

Mere Registration-Identification Ordinance May be Valid Where Only a Nominal Fee is Charged.

Murdock v. Pennsylvania, supra.
Cantwell v. Connecticut, supra.

[fol. 53] 7. *The Fact That a Solicitor Receives Some Profit From His Work Cannot Transform Evangelism Into a Commercial Enterprise.*

Murdock v. Pennsylvania, supra.
In re Darte, supra.

8. To Impose Prior Restraints On The Colporteurs or Solicitors for Religious Groups is to Take From Them a Vital Support and an Ordinance Which Does so is Void.

Murdock v. Pennsylvania, supra.

9. An Ordinance Which Empowers a Board or Officer to Decide Whether Activities of a Religious Group are or are not Religious or Which Requires That All Contributions Secured by Solicitors shall be Devoted to Purely Religious Purpose Contravenes the Federal Constitution.

Murdock v. Pennsylvania, supra.

10. The Constitutionality of an Ordinance Purporting to Exercise the Police Power is Tested by its Operation and Effect as Construed and Applied by Officers Authorized to Enforce it.

Murdock v. Pennsylvania, supra.
Cantwell v. Connecticut, supra.
Near v. Minn. ex rel. Olson, 283 U. S. 697.
In re Darte, supra.

11. *The State Cannot, by Legislation, Make a Book Agent out of a Bible Selling Solicitor or by Legislative Fiat Convert a Second-hand Store Operated in Support* [fol. 54] *of Charity or Religion Into a Commercial Business or a Junk Shop, or Distort a License Tax or a Permit by the Device of Employing Other Terms.*

Murdock v. Pennsylvania, supra.
In re Darte, supra.

§ 12. *The Equal Protection of the Laws Clause Prohibits Legislation Which Favors a Particular Portion of a Class*

Even as it Requires Equal Exemptions of All Similarly Situated.

Frost v. R. Com., 271 U. S. 583, 592.
Smith v. Cahoon, 283 U. S. 553, 566.
In re Darte, 172 Cal. 47.

13. Article VI, Sec. 25, Constitution of California forbids That Any Classification be Arbitrarily Made.

Martin v. Sup. Ct., 194 Cal. 93.
In re Sumida, 177 Cal. 388.
Deyoe v. Sup. Ct., 140 Cal. 476.
Pasadena v. Stimson, 91 Cal. 231.

14. A Statute, Valid on its Face, May be Unconstitutionally Applied, and When This is Done One Injured Thereby May Enjoin its Threatened Enforcement.

Yick Wo v. Hopkins, 118 U. S. 356, 373.
Brock v. Sup. Ct., 12 Cal. (2d) 605.
Bueneman v. Santa Barbara, 8 Cal. (2d) 405.

[fol. 55] 15. Corporations Are Persons Within the Equal Protection Clause as Well as the Due Process Guaranty.

Liggett Co. v. Baldridge, 278 U. S. 105.
Power Mfg. Co. v. Saunders, 274 U. S. 490, 496.
Santa Clara v. S. P. R. Co., 118 U. S. 394.

[fol. 56] [File endorsement omitted.]

[fol. 57] IN THE SUPREME COURT OF CALIFORNIA
L.A. No. 18946

[Title omitted]

ANSWER TO PETITION FOR WRIT OF PROHIBITION—Filed April 3, 1944

Comes now The Municipal Court of the City of Los Angeles, respondent in the above entitled action, and answering the petition filed in such action admits, denies and alleges, as follows:

I

Respondent denies generally and specifically each and every allegation contained in Paragraph II of said petition.

II

Denies generally and specifically each and every allegation contained in Paragraph IV of said petition.

III

[fol. 58] In answer to Paragraph V of said petition, petitioner admits the allegations therein contained commencing with the words "That at all times" at the beginning of said paragraph, and continuing down to and including the words "and made a part of this petition by reference."

Respondent denies generally and specifically the allegations contained in said Paragraph V commencing with the words "which said Ordinance," following the words "by reference," and continuing down to and including the words "and the issuance of a license or permit by said city to so solicit."

IV

In answer to Paragraph VI of said petition, respondent admits that the provisions of Ordinance 77,000 embodied in Sections 44.02 to 44.15, inclusive, do not apply to persons who solicit donations which are to be used solely for religious, missionary or evangelical purposes.

Respondent denies generally and specifically each and every allegation contained in said paragraph not hereinbefore in this paragraph admitted to be true.

V

In answer to Paragraph VII of said petition, respondent admits that Section 44.09 of the Los Angeles Municipal Code reads as follows:

> "(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon [fol. 59] any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by the express written permission of the Board.
>
> "(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, cor-

ridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a 'notice of intention' as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article."

Respondent denies generally and specifically each and every allegation contained in said Paragraph VII not hereinbefore in this paragraph specifically admitted.

VI

Respondent denies generally and specifically each and every allegation contained in Paragraph VIII of said petition.

VII

[fol. 60] Respondent denies generally and specifically each and every allegation contained in Paragraph IX of said petition.

VIII

Respondent denies generally and specifically each and every allegation contained in Paragraph X of said petition.

IX

Respondent denies generally and specifically each and every allegation contained in Paragraph XIV of said petition.

X

Respondent denies generally and specifically each and every allegation contained in Paragraph XV of said petition.

XI

Respondent denies generally and specifically each and every allegation contained in Paragraph XVI of said petition.

XII

Respondent denies generally and specifically each and every allegation contained in Paragraph XVII of said petition.

XIII

Respondent denies generally and specifically each and every allegation contained in Paragraph XIX of said petition.

[fol. 61] WHEREFORE, respondent The Municipal Court of the City of Los Angeles prays, that the Alternative Writ of Prohibition, heretofore issued in this action, be dissolved; that a Peremptory Writ of Prohibition be denied; that respondent be permitted to go hence with its costs, and that it have such other and further relief as may be proper in the premises.

Ray L. Chesebro, City Attorney, Donald M. Redwine, Assistant City Attorney, John L. Bland, John L. Bland, Deputy City Attorney, Attorneys for Respondent.

[fols. 62-64] [File endorsements omitted]

[fol. 65] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

DEMURRER TO PETITION FOR WRIT OF PROHIBITION—Filed April 3, 1944

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court:

Comes now the Municipal Court of the City of Los Angeles, respondent in the above entitled action, and demurs to the petition heretofore filed in the District Court of Appeal and later transferred to the above entitled court upon a petition for hearing in such court, and, as grounds for demurrer, alleges:

I

That said petition fails to state facts sufficient to constitute a cause of action for prohibition of this respondent.

[fol. 66] II

That said petition is uncertain in the following respects, to wit:

It cannot be determined from examination of paragraph II of said petition whether charities carried on by the

corporation petitioner are part of petitioner's religious activities and worship, or whether such activities are carried on separate and apart from the religious worship conducted by such petitioner;

It cannot be determined from examination of paragraph III of said petition wherein or how the conduct of charitable enterprises constitutes a tenet of the petitioners' religion;

It cannot be determined from paragraph VI of such petition wherein or how charity is an essential activity or integral part of missionary, evangelical or religious activity of the petitioners;

It cannot be determined from said petition, and particularly from paragraphs VII and VIII thereof, wherein or how the construction placed upon the ordinance named in said petition by persons charged with the enforcement thereof tends to render such ordinance invalid;

It cannot be determined from said petition wherein or how that portion of Ordinance 77,000, Section 24.01, set out in said petition in Exhibit A, pages 22 to 33, inclusive, and made a part of said petition by reference, does in any manner interfere with or hinder the petitioners in their religious activities.

III

That said petition is unintelligible for the same reasons which render it uncertain.

[fols. 67-68] IV

That said petition is ambiguous for the same reasons which render it uncertain.

Wherefore, respondent prays that its demurrer be sustained without leave to amend; that the proceedings against this respondent be dismissed, and that it have judgment for its costs.

Ray L. Cheseboro, City Attorney, Donald M. Redwine, Assistant City Attorney, John L. Bland, Deputy City Attorney, Attorneys for Defendant and Respondent, The Municipal Court of the City of Los Angeles.

I hereby certify that I have read the foregoing demurrer and that the same is not interposed for the purpose of

hindrance or delay, and that I believe the same to be meritorious and well taken.

John L. Bland.

[fol. 69] In the Supreme Court of California

(Title omitted)

Points and Authorities in Support of Demurrer

Statement of Issues of Law

I

The only issues presented by the alternative writ in the case appears to be whether the ordinance involved is in contravention of:

(1) Article I, Section 21 of the California Constitution, or

(2) The Fourteenth Amendment to the Federal Constitution.

It appears from the petition filed in this proceeding that the petitioners limit their claim of invalidity to the sections above named.

[fol. 70] We shall discuss the constitutional provisions named in the sequence set out above.

Although there are two petitioners named in the action it seems apparent that Murdock is the whipping horse or guinea pig brought in to enable the corporation petitioner to secure a decision upon its rights as a religious organization to solicit funds free from the regulations imposed by the ordinance set out in the petition.

Printed copies of the ordinance provisions involved were affixed to respondent's answer to petition for hearing in this court and are available for ready reference. Additional copies will be furnished if desired.

For what we trust will be helpful to the court, paragraphs applicable to the different propositions of law involved will be separately numbered.

[fol. 71] Subdivision A

The Ordinance Does Not Contravene the Restrictions of Section 21 of Article I of the State Constitution.

A-I

In so far as Section 21 of Article I of the State Constitution, hereafter referred to as "Section 21," is concerned, it appears that petitioners' only claim is contained in paragraph VIII of the petition, wherein they allege that "as construed and applied" by the Board all religious activities of churches, etc. are construed as being for charitable purposes, thereby subjecting such organizations to the regulatory provisions of the ordinance. The further claim is made therein that, because of the provision in Section 44.09 whereby certain organizations may be exempted from certain regulatory provisions of the ordinance, the entire ordinance is invalid because of infringement of such Section 21.

A-II

We find ourselves in a position where we cannot tell with certainty whether petitioners' claim of invalidity is based upon (a) the Board's construction of the ordinance as inclusive of all religious organizations, or (b) because Section 44.09 permits the Board to administer the law unfairly.

A-III

Section 21 requires equal treatment of all persons. Such provision has been uniformly interpreted as requiring only uniformity of treatment of all persons similarly situated.

People v. Twelfth District Court, 17 Cal. 547;
Martin v. Superior Court, 194 Cal. 93.

[fol. 72] A-IV

The provisions of Section 21 apply to actions by the state (and municipalities) and have no reference to actions by individuals.

Los Angeles Investment Co. v. Gary, 181 Cal. 680.

It follows that the interpretation placed upon the law by the Board is not the criterion by which we must measure the validity of the ordinance.

The definition of "charitable" includes the words "philanthropic," "social service," "benevolent," "patriotic, either actual or purported." In our opinion the definition does not include religious organizations engaged solely in spreading the tenets of their belief by teaching or preaching, either orally or in writing. On the other hand, it includes all solicitations made for the purposes described, irrespective of whether such solicitations are made by religious or nonreligious organizations. Our conclusion is supported by one of the series of exceptions in Section 44.16.

In so far as the ordinance touches the activities of a religious organization in its charitable works, it regulates the *practice* of its religion as distinguished from the religious belief of its members. (See *Davis v. Beason*, 133 U. S. 333, 33 L. Ed. 637.)

A-V

An act applying equally to all persons in a given class constitutes equality of law within the meaning of the Constitution.

State Board of Tax Commissioners v. Jackson, 283 U. S. 527, 75 L. Ed. 1248;
Southern Ry. Co. v. Greene, 216 U. S. 400, 54 L. Ed. 536;
Maxwell v. Bugbee, 250 U. S. 525, 63 L. Ed. 1124.

[fol. 73]

A-VI

The provisions of the ordinance apply equally to all persons soliciting for any of the purposes defined as charitable and come within the rule of classification established by the courts of this State and the United States Supreme Court. Likewise, the provisions of Section 44.09 apply equally to all persons in the classifications therein made. The provision allowing the Board to exempt some persons from some of the provisions of the ordinance confers an equal right or privilege upon all persons coming within the purview of the section to seek exemption. Whether the Board has arbitrarily exercised such power presents a question not involved herein. It is not claimed that the Board has arbitrarily granted exemptions to others and denied them to these petitioners, as was the situation in *Yick Wo v. Hopkins*, 118 U. S. 356, 30 L. Ed. 220. It

does not appear by the petition that the Board has ever exercised the power conferred by Section 44.09 or that these petitioners have not been given equal privileges upon application therefor.

A-VII

Before discussing the effect of such provision we point out that, upon the record before the court the petitioners are not entitled to challenge the validity of Section 44.09. Only those affected by a discrimination may raise the question of validity of a statute.

Murphy v. California, 225 U. S. 623, 56 L. Ed. 1229;

People v. Globe Grain & Milling Co., 211 Cal. 121.

[fol. 74]

A-VIII

The equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances.

National Candy Co. v. Federal Trade Comm., 104 Fed. (2d) 999,

in which appellant unsuccessfully urged that a law which permitted the Commission to enforce a rule of conduct against it not enforced against all its competitors, amounted to unequal protection.

A-IX

Though exemption is clear discrimination, statute is not invalid unless arbitrary.

Schwartzman v. Stahl (D. C. Mo.), 60 Fed. (2d) 1024.

A-X

It is only where enforcement agency exercises discretionary power *arbitrarily and unjustly* that enforcement of valid regulation becomes violative of the equal protection clause.

Thompson v. Spear, 91 Fed. (2d) 430; certiorari denied: 302 U. S. 762, 82 L. Ed. 592.

A-XI

It does not appear from the allegations in the petition that the petitioners, or either of them, have ever requested

from the Board an exemption under subsection (a) of Section 44.09. There are assuredly no allegations that the Board has denied to petitioners the privileges of Section 44.09 and given such privileges to others.

[fol. 75] A-XII

The contention that the section is discriminatory is purely speculative. On its face it treats all persons similarly situated in the same manner.

People v. Globe Grain & Milling Co., supra, 211 Cal. 121.

As pointed out in the case last cited, no contention is made that there has been actual discrimination in the granting of exemptions. The results claimed by the petitioners are speculative only.

A-XIII

Furthermore, we know of no case, and petitioners cite us to none, which holds that anyone has a vested right to solicit money or other property upon the streets of a municipality to be used for charitable purposes. The subject of solicitation of funds by religious organizations as a right vouchsafed to them will be discussed elsewhere herein. Suffice it to say at this point that, unless such right arises because of some provision of the Constitution, other than Section 21 of Article I, it does not exist.

A-XIV

Assuming, for the purpose of argument only, Section 44.09 to be void in its entirety, such assumption does not aid petitioners. The only effect of such validity would be to leave the other provisions of the ordinance in effect thereby requiring that all persons file the statement provided for by Section 44.05 and comply with other provisions relative to display of information cards.

[fol. 76] Subdivision B

The Ordinance Does Not Infringe Upon Petitioners' Freedom of Religion.

B-I

It has long been, and still is, the rule that though statutes may not undertake to control one's religious beliefs, they may circumscribe the practice of such beliefs.

Davis v. Beason, supra, 133 U. S. 333, 33 L. Ed. 637;
Cantwell v. Mass, 310 U. S. 296, 8 L. Ed. 1213;
Reynolds v. U. S., 98 U. S. (8 Otto) 145, 25 L. Ed. 244.

B-II

The state may prevent acts which tend to interfere with orderly government even though such acts be done in the name of religion.

Cox v. New Hampshire, 312 U. S. 569, 85 L. Ed. 1049;
Chaplinsky v. New Hampshire, 315 U. S. 568, 86 L. Ed. 1031;
Prince v. Commonwealth, ... U. S. ....., 88 L. Ed. (Adv. Op.) 403.

B-III

The state may protect its citizens from fraudulent solicitations by means of provisions for registration, and regulate the time and manner of solicitations in the interest of public safety, peace, comfort or convenience.

Cantwell v. Mass, supra, 310 U. S. 296, 84 L. Ed. 1213;
Murdock v. Penn., 319 U. S. 105, 87 L. Ed. 1292.

[fol. 77] B-IV

Examination of the ordinance involved in this proceeding discloses that, in order for an organization interested in the support of a charitable enterprise to proceed with solicitation for funds to support such enterprise, it is only necessary that it file a statement showing the purpose of such solicitation and the use to which the funds will be put; a showing of the need for funds; the character and

method of such proposed solicitation; the probable expenses of such solicitation, together with other information which would inform the public concerning facts tending to enlighten prospective donors concerning the use to which donations would be devoted. (Sec. 44.05, Los Angeles Municipal Code.) Thus the organization registers as one desiring to seek gifts from the public.

B-V

Having so registered, the organization must file copies of contracts with agents, etc. (Sec. 44.06, Los Angeles Municipal Code.) Certainly the public is entitled to know whether fifty, seventy-five or ninety per cent of the money it supposedly gives to an orphan asylum goes to solicitors. No honest charitable enterprise could well object to furnishing such information. A dishonest organization is in no position to insist upon a right to impose upon the public.

B-VI

After filing the statements required by Sections 44.05 and 44.06, there must be secured from the Commission an information card showing certain information, as set out in subsection (d), Section 44.03, and a solicitor must exhibit such card to prospective donors. (Sec. 44.12, Los Angeles Municipal Code.) We apprehend that no honest [fol. 78] person, genuinely interested in promoting the welfare of a charitable project, could refuse to disclose the information contained upon such cards. If the cause be worthy such cards constitute an eloquent appeal for gifts.

B-VII

Several other sections in the ordinance between Sections 44.01 and 44.15 are regulatory in their nature. They apply for the most part to the conduct of solicitors who have first complied with the provisions of the sections heretofore discussed. It does not appear to us that those sections are of such importance in this case as to justify an extension of the points and authorities. It is respondent's position that the provisions specifically discussed are valid regulations and that until such time as the petitioners have complied with such regulations they are not in position to challenge the validity of such other provisions.

B-VIII

In paragraph VIII of their petition petitioners allege, in effect, that the Board charged with the duty of administering the provisions of the ordinance under consideration construes the ordinance as authorizing such Board to determine whether or not any particular solicitation is or is not religious, and to grant or deny an application according to such determination. Although the rule is that the construction given to a statute by an administrative board is entitled to much weight, such rule does not apply when it appears that the administrative agency has used an interpretation wholly at variance with the language of the act. We find no language which gives the Board any discretion except to grant exemptions from certain requirements.

[fol. 79] As a condition precedent to the waiver of certain requirements it must be made to appear that the statement required by Section 44.06 has been filed; that general publicity to the drive for funds has been given, and that the solicitors are to work without compensation. (Subsection (f), Sec. 44.02.) There is nothing in such section or in any other section which authorizes the Board to inquire into the matter of religion. There is nothing in the ordinance which authorizes or purports to authorize the Board to issue or deny a permit to solicit. Any person who files the statement required by Section 44.05 is entitled to receive an information card upon complying with the provisions of Section 44.06. The issuance of cards in proper cases is a duty imposed by law upon the Board. A refusal to issue such cards would be overcome by a writ of mandate. We feel sure that in the absence of almost positive showing that the purported scheme was fraudulent, no court would refuse a writ.

B-IX

Under the provisions of the ordinance the only time the question of religion can enter into the matter of solicitation is in consideration of whether a person comes within the exceptions found in Section 44.16, and in particular the provision exempting solicitations solely for missionary, evangelical or religious purposes. As to such question the Board has no authority to decide whether or not a particular person or organization comes within the exception.

The person wishing to make solicitations must determine for himself in the first instance whether he comes within such exception. He is not required to ask the Board. If, however, he concludes that he comes within the exception, he proceeds at the peril that some court (not the Board) [fol. 80] may conclude that his activities are beyond the scope of the exemption and that he is guilty of a misdemeanor.

Perhaps in the past persons wishing to solicit for some project have inquired of the Board or its secretary whether or not they would have to file a statement and otherwise comply with the provisions of the ordinance. It may be that some member of the Board, or the secretary, has told such inquirers that the Board considers certain persons as coming within the exception and others as being without the exception. Any such statement can be an expression of opinion only. If the inquirer concludes he is within the exception he can proceed, subject only to risk of conviction if a court fails to see eye to eye with him.

The most that can be said in regard to any interpretation given by the Board is that it constitutes a statement that, so far as the Board is concerned, persons coming within the Board's conception of the outer limits of the exception will not be prosecuted for solicitation without filing a statement and otherwise complying with the ordinance. In this connection we point out that, one who in fact comes within the exception has no interest in the validity of the ordinance as it applies to others.

Whether petitioner Murdock comes within the exception is a question of fact for a trial court. He has been convicted twice and each conviction reversed on account of error occurring in the trial. Until such time as he stands convicted he is not in position to urge the invalidity of the ordinance, unless he admits that, at the time named in the complaint, he was not engaged in soliciting solely for religious, missionary or evangelical purposes. Because the lower court has jurisdiction to determine the fact of [fol. 81] whether he was or was not engaged in such exempted endeavor, it cannot be exceeding its jurisdiction in again placing him on trial. Reversals of judgment of conviction do not deprive the trial court of jurisdiction to again try the action.

B-X

In paragraph V of the petition, complaint is made of the provisions of Section 44.18 being applicable only to promoters and their agents, although such section is not specifically named by the petitioners. Such section applies only to promoters, that is, to persons who are engaged in the *business* of soliciting subscriptions for charitable enterprises. (Sec. 44.01, Los Angeles Municipal Code.) It does not appear from the petition that either of the petitioners is a promoter, for which reason they are not in position to challenge the validity of the section named. We therefore see no reason for entering into an extended discussion of the section. Suffice it to say that we see no constitutional objection to a provision whereby one wishing to engage in the business of soliciting donations for charitable organizations, in which such solicitor has no interest other than a purely commercial one, should not be required to secure a permit to engage in such business in the city and to post a bond insuring his honesty. Such provision does not impinge upon religious liberty. However broad may be the outer limits of the field of religious liberty, the matter of engaging in business for profit does not come within those limits.

[fol. 82] Subdivision C

The Petition Is Uncertain

C-I

Although we consider the petition uncertain for numerous reasons set out in detail in our demurrer, we shall avoid unduly extending these points and authorities by a discussion of each instance of uncertainty specified. We do not, however, thereby waive any of the specifications.

One specification merits particular attention. We refer to the allegations contained in paragraph II of the petition. In the first part of the paragraph petitioners attempt to allege that their activities are entirely religious, missionary or evangelical. If in fact such is the extent of their activities they are entirely exempt from the regulation provided by the ordinance. However, in the last part of the paragraph appears an allegation concerning "incidental" charitable activities. What petitioners mean

by such language is far from clear. Are such activities outside the sphere of religious activities and carried on merely as an "incidental" occupation? Or are they a part of their religious belief? As we view it, the question of whether petitioners are engaged solely in religious, etc. activities is a question of fact within the jurisdiction of the Municipal Court.

Assuming but not conceding that this court has the power to determine in this action whether the activities of the petitioners are limited to those bringing them within the exception, and assuming that upon the taking of testimony this court should decide that they are so conducting themselves, it follows that the validity of the ordinance as it may affect others not within the exception is not before the court.

[fol. 83] It is likewise patent that, whatever might be the decision of this court upon a given set of facts, it could not prohibit the lower court in some new action from determining for itself whether, under different circumstances, the petitioners come within the provisions of the ordinance. Were it otherwise it would open the door to fraud; an organization could confine its activities to matters within the exception and secure a judgment in its favor. Thereafter it might change its scheme of operation and plead the judgment in defense.

The respondent has no objection to having this or any other court outline the power of regulation which the city has over solicitations for charity. It would, however, like petitioners to "get off the fence" so that the decision, whatever it may be, will be something more than mere dictum. We have enough of that in *Ex parte Dart*, 172 Cal. 47.

Conclusion

The respondent briefly restates its contentions, as follows:

(1) Persons coming within the exceptions in Section 44.16 of the Los Angeles Municipal Code may not question the validity of the ordinance as it is applied to others.

(2) The ordinance constitutes a valid exercise of the police power. It constitutes a means of registration of persons engaged in soliciting donations, and prescribes

reasonable regulations governing the conduct of solicitations.

(3) The ordinance does not confer power, arbitrary or otherwise, upon the Board to deny to anyone the right to solicit for charitable purposes.

[fols. 84-87] (4) In so far as it confers power upon the Board to waive compliance with certain regulations, such action must be taken in the exercise of a wise discretion. There is no allegation that the Board has acted arbitrarily, or that it has denied to petitioners privileges granted to others under similar circumstances.

(5) If the exception found in Section 44.16 of the Los Angeles Municipal Code be considered as establishing a religious test and for that reason invalid, such fact does not invalidate the remainder of the ordinance. Declaring such provision invalid would place the petitioners upon the same footing as other persons soliciting funds from the public.

The ordinance as thus construed would still come within the limits of control of religious organizations as outlined in the various decisions of the United States Supreme Court.

Respectfully submitted, Ray L. Chesebro, City Attorney, Donald M. Redwine, Assistant City Attorney, John L. Bland, Deputy City Attorney, Attorneys for Defendant and Respondent, The Municipal Court of the City of Los Angeles.

[fol. 88] IN THE SUPREME COURT OF CALIFORNIA

IN BANK

[Title omitted]

ORDER GRANTING HEARING AFTER JUDGMENT BY DISTRICT COURT OF APPEAL AND ORDER, RE ISSUANCE OF ALTERNATIVE WRIT OF PROHIBITION—January 27, 1944

Petition for hearing Granted and cause transferred to this Court. Let an alternative writ of prohibition issue, returnable before this Court at its courtroom in Los Angeles, on June, 1944 calendar.

Dated January 27, 1944.

Gibson, Chief Justice, Carter, Justice, Traynor, Justice, Schauer, Justice.

[fol. 89] IN SUPREME COURT OF CALIFORNIA

[L. A. No. 18946. In Bank. June 26, 1946.]

THE RESCUE ARMY (a Corporation) et al., Petitioners, v. THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES, Respondent.

OPINION—June 26, 1946

[On hearing after decision by the District Court of Appeal, Second Appellate District, Division Three, denying writ of prohibition without opinion, Nov. 29, 1943. Writ denied.]

[1a-1c] Prohibition—Grounds—Excess of Jurisdiction.—The constitutionality of a statute or ordinance may be tested by prohibition on the ground that its invalidity goes to the jurisdiction of the court to try the case. While prohibition is limited to proceedings without or in excess of jurisdiction, and while a trial court has jurisdiction to determine the constitutional question, yet when it has decided in favor of its jurisdiction and proceeds to try the case it may then be claimed that a court without jurisdiction is proceeding to exercise it, and resort to prohibition is proper to restrain the court from acting in excess of jurisdiction.

[2a, 2b] Id.—Grounds—Excess of Jurisdiction.—The fact that the trial court has no jurisdiction within the meaning of that term as used in certiorari and prohibition does not mean that a judgment based on an unconstitutional statute is open to collateral attack, and to allow a writ of prohibition to test the constitutionality of a statute does not open the door for such purpose.

[3] Id.—Grounds—Want or Excess of Jurisdiction.—In certiorari and prohibition proceedings, the term "jurisdiction" has a very broad meaning, and a writ may

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[1] Determination of constitutionality of statute in prohibition proceeding, note, 113 A.L.R. 796. See, also, 21 Cal.Jur. 618; 42 Am.Jur. 168.

McK. Dig. References: [1, 2] Prohibition, § 2; [3] Prohibition, § 16(1); [4] Prohibition, § 51; [5] Courts, § 21; [6] Prohibition, § 55; [7] Prohibition, § 11; [8] Prohibition, § 14(2); [9, 10] Prohibition, § 14(5); [11] Constitutional Law, § 115; [12] Charities, § 38.

[fol. 90] be granted where the court has no jurisdiction to act except in a particular way, even though it has jurisdiction, in a fundamental sense, over the subject matter and the parties.

[4] Id.—Procedure—Objection and Ruling in Lower Court.—To authorize the issuance of a writ of prohibition to restrain a municipal court from proceeding to try a criminal case on the ground that the statute under which it claims jurisdiction is unconstitutional, it is necessary to challenge jurisdiction in that court, so that it may preliminarily decide the question whether it has jurisdiction to proceed.

[5] Courts—Jurisdiction—Determination.—A trial court is not deprived of jurisdiction to determine the constitutionality of a particular ordinance or statute by virtue of the fact that it may decide the question erroneously.

[6] Prohibition—Procedure—Petition.—A petition for a writ of prohibition on the ground of unconstitutionality of a statute or ordinance should affirmatively allege that the challenge to jurisdiction was raised in the inferior court. But this requirement may be dispensed with when not in the interests of justice, as where the requirement has not previously been emphasized and where the petitioner has been twice tried for violation of an ordinance which he claimed to be unconstitutional from the outset, and the court is about to proceed to a third trial.

[7] Id.—Other Remedies—Habeas Corpus.—Even though the remedy of habeas corpus may be used to test the constitutionality of a statute or ordinance, one awaiting trial under an allegedly unconstitutional ordinance should not be refused prohibition on the ground that habeas corpus would be available if he would submit to imprisonment.

[8] Id.—Other Remedies—Appeal—Test of Adequacy.—The remedy by appeal is not inadequate merely because more time would be consumed by pursuing it through the ordinary course of law than would be required in the use of the writ of prohibition.

[9] Id.—Other Remedies—Appeal.—Whether there is an adequate remedy by trial and appeal in the ordinary course of law that will preclude prohibition must be

determined in each case not only on the basis of precedent but also from an examination of the facts. The reviewing court has discretion to determine the circumstances which justify the use of prohibition, and in the exercise of that discretion may take into consideration the desirability of a prompt settlement so that a multiplicity of void proceedings in other cases will be prevented.

[10] Id.—Other Remedies—Appeal—Discretion of Court. —Where the petitioner for a writ of prohibition had been subjected to two trials and had successfully [fol. 91] prosecuted appeals from judgments of conviction and had sought to enjoin the enforcement of the ordinance on the ground that it is unconstitutional, the Supreme Court, in the circumstances, should not refuse to decide the jurisdictional questions involved in the criminal charges on the ground that there is a plain, speedy and adequate remedy by trial and appeal.

[11] Constitutional Law—Fundamental Rights—Freedom of Religion.—A person is free to hold whatever belief his conscience dictates, but when he translates his belief into action he may be required to conform to reasonable regulations which are applicable to all persons and are designed to accomplish a permissible objective.

[12] Charities—Municipal Control—Solicitation.—Provisions of Los Angeles Ordinance § 44.09, requiring persons who desire to solicit charitable contributions by means of boxes or receptacles in public places, to secure a permit therefor from the Board of Social Service, are constitutional.

Proceeding in prohibition to restrain the Municipal Court of the City of Los Angeles from proceeding with a trial for violation of an ordinance regulating the solicitation of contributions. Writ denied.

Robert H. Wallis for Petitioners.

Ray L. Chesebro, City Attorney, Donald M. Redwine, Assistant City Attorney, and John L. Bland, Deputy City Attorney, for Respondent.

Victor Ford Collins, Francis D. R. Moote and David Coleman as Amici Curiae on behalf of Respondent.

GIBSON, C. J.—Petitioners seek a writ of prohibition to restrain the Municipal Court of the City of Los Angeles from proceeding to try petitioner Murdock for the alleged violation of certain sections of an ordinance, regulating the solicitation of contributions, which it is claimed are in conflict with the federal Constitution, Amendments I and XIV, and the California Constitution, article I, section 21. It is alleged that Murdock has been twice convicted of a violation of the ordinance, that each time the conviction was reversed by the appellate department of the superior court, that a third trial has been ordered, and that the respondent court will proceed therewith unless restrained.

[1a] The constitutionality of a statute or ordinance may be tested by prohibition on the ground that invalidity of the legislation goes to the jurisdiction of the court to pro- [fol. 92] ceed to try the case. (See *Whitney* v. *Superior Court*, 182 Cal. 114 [187 P. 12]; *Levy* v. *Superior Court*, 105 Cal. 600 [38 P. 965, 29 L.R.A. 811]; *Arfsten* v. *Superior Court*, 20 Cal. App. 269, 275 [128 P. 949]; *cf. Broady* v. *Jennings*, 70 Cal. App. 647 [234 P. 120].) This rule is supported by the great weight of authority in other states. (See cases collected in 113 A.L.R. 796, 800; 42 Am. Jur. 168.) The same principle has been applied in cases where habeas corpus has been used to test the constitutionality of an ordinance. (See *In re McCoy*, 10 Cal. App. 116, 124-125 [101 P. 419]; *In re Vitalie*, 117 Cal. App. 553, 557 [4 P. 2d 171]; *cf. Ex parte Kearny*, 55 Cal. 212; Ferris, Extraordinary Remedies (1926) 83; 1 Bailey on Habeas Corpus (1913) 91-93; 25 Am. Jur. 164.) Although the right to discharge by habeas corpus is not limited to cases in which a court has exceeded its jurisdiction (see Pen. Code, §§ 1485, 1487; *In re Bell*, 19 Cal. 2d 488, 492-495 [122 P. 2d 22]; *Portnoy* v. *Superior Court*, 20 Cal. 2d 375, 378 [125 P. 2d 487]), the writ has been traditionally used for that purpose. (See *In re Vitalie*, 117 Cal. App. 553, 557 [4 P. 2d 171].)

The view that constitutionality goes to jurisdiction has at times disturbed the courts because of the possibility that full application of the theory might render otherwise final judgments vulnerable to collateral attack, and confusion also has sometimes arisen because of a failure to understand that a court has jurisdiction to determine its own jurisdiction in the first instance. The difficulties in-

herent in applying the term jurisdiction in cases involving unconstitutional statutes impelled the court in the Bell case to recognize that habeas corpus may be used in certain situations to test the constitutionality of a statute whether or not there is a want of jurisdiction. (19 Cal. 2d at pp. 492, et seq.) In prohibition, however, we are limited by statute to proceedings without or in excess of jurisdiction (Code Civ. Proc., § 1102) and we are therefore squarely confronted with the problems referred to above.

[2a] The fact that a trial court has no jurisdiction within the meaning of the term as used in certiorari and prohibition proceedings does not mean that a judgment based upon an unconstitutional statute is open to collateral attack. In *Chicot County D. Dist.* v. *Baxter State Bank*, 308 U. S. 371 [60 S. Ct. 317, 84 L. Ed. 329], a civil case, the court declared that broad statements to the effect that unconstitutional laws confer no rights whatsoever must be taken with qualifications and that a decree based upon an assumption of validity is res judicata. (See, also, 136 A.L.R. 1032; (1942) 28 Va. L. Rev. 656-657; (1942) 27 [fol. 93] Iowa L. Rev. 315-322 and (1942) 26 Minn. L. Rev. 658-661.) [3] In certiorari and prohibition proceedings the term jurisdiction has a very broad meaning, and a writ may be granted where the court has no jurisdiction to act except in a particular manner, even though it has jurisdiction, in the fundamental sense, over the subject matter and the parties. (*Abelleira* v. *District Court of Appeal*, 17 Cal. 2d 280, 287 et seq. [109 P. 2d 942, 132 A.L.R. 715]; *Hill* v. *Superior Court*, 16 Cal. 2d 527 [106 P. 2d 876]; *Fortenbury* v. *Superior Court*, 16 Cal. 2d 405 [106 P. 2d 411].) [2b] It does not follow, therefore, that to allow prohibition in such cases will result in opening the door to collateral attack.

[1b] The Bell case correctly declares that the trial court has jurisdiction to determine whether the statute is constitutional, and the same is true as to any other jurisdictional defense. The mere assertion of a claim of unconstitutionality does not oust the trial court of jurisdiction, because the very issue of constitutionality is one which the court has jurisdiction to determine. (See discussion, *In re Bell, supra*, 19 Cal. 2d 488, 492.) This proposition, however, is not inconsistent with the holding that prohibition lies to restrain a court from proceeding without or in ex-

cess of jurisdiction. (See *Abelleira* v. *District Court of Appeal*, 17 Cal. 2d 280 [109 P. 2d 942, 132 A.L.R. 715]; *Hill* v. *Superior Court*, 16 Cal. 2d 527 [106 P. 2d 876].) A court has jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and it must have authority to decide that question in the first instance. [4] It is necessary, therefore, to challenge the jurisdiction of the trial court *in that court*, by demurrer, motion, plea or other objection of some kind, so that *that court* may preliminarily decide the question whether it has jurisdiction to proceed. And unless a party can show that a lower tribunal, *after first determining that it has jurisdiction, is proceeding to exercise it*, there is nothing for a higher court to prohibit. This obvious principle is one of the cornerstones of our system of lower and higher tribunals.

[5] The statement in *Portnoy* v. *Superior Court*, 20 Cal. 2d 375, 378 [125 P. 2d 487], that a trial court is not deprived of jurisdiction to determine the constitutionality of a particular ordinance or statute by virtue of the fact that it may decide the question erroneously, is properly applicable to this basic right of the trial court to decide the question of jurisdiction in the first instance.

[1c] When, however, the trial court has heard and determined the jurisdictional challenge, and has decided in [fol. 94] favor of its own jurisdiction, and then proceeds to *act*, that is, *to try* the cause on its merits, the situation is entirely different. It then may be properly claimed that a court without jurisdiction is purporting to *exercise it*. At this stage, jurisdiction to determine jurisdiction has been exercised, and the higher courts will, in an appropriate case, restrain the lower court from acting in excess of jurisdiction (see, e. g., *Greenberg* v. *Superior Court*, 19 Cal. 2d 319 [121 P. 2d 713]; *Abelleira* v. *District Court of Appeal*, 17 Cal. 2d 280 [109 P. 2d 942, 132 A.L.R. 715]; *Jackson* v. *Superior Court*, 10 Cal. 2d 350 [74 P. 2d 243, 113 A.L.R. 1422].) [6] The petition should affirmatively allege that the challenge to jurisdiction was raised in the lower court.

Although the petition in the present case does not affirmatively allege that the jurisdiction of the municipal court was challenged by an appropriate motion, the parties do not assert such a challenge was not made, and since

Murdock has been twice tried for the violation of an ordinance which from the outset he has claimed to be unconstitutional, and the case has been set for trial a third time, it is apparent that the court has decided in favor of its own jurisdiction and is proceeding to exercise it. Moreover, although the requirement that before applying for prohibition the claim of unconstitutionality must be made in the trial court has been generally observed in practice (see *Jackson* v. *Superior Court, supra,* and *Greenberg* v. *Superior Court, supra*) the requirement that the petition must affirmatively allege compliance with the condition has not been emphasized in previous decisions of this court. Under these circumstances we have determined that it is not in the interests of justice to refuse to entertain the application because of the absence of a more complete showing in the petition.

[7] It is not, of course, a proper case for prohibition if there is a plain, speedy and adequate remedy in the ordinary course of law. As we have seen, the constitutional challenge may ordinarily be made by demurrer or motion in the trial court. In addition, habeas corpus may be used to test the constitutionality of a statute (*In re Bell,* 19 Cal. 2d 488 [122 P.2d 22]), and the availability of that remedy has been held to be a complete bar to the issuance of prohibition. (*Leach* v. *Superior Court* (1932), 215 Cal. 531 [12 P.2d 1].) But where, as here, the defendant cannot use habeas corpus because he is not being deprived of his liberty, he should not be refused prohibition, while [fol. 95] awaiting trial, solely on the ground that habeas corpus would be available if he would submit to imprisonment.

[8] The next question, therefore, is whether trial and appeal are adequate remedies under the circumstances of this case. A remedy is not inadequate merely because more time would be consumed by pursuing it through the ordinary course of law than would be required in the use of the extraordinary writ of prohibition. (*Bennett* v. *Superior Court,* 218 Cal. 153, 156 [21 P.2d 946]; *Lindley* v. *Superior Court;* 141 Cal. 220 [74 P. 765]; *Agassiz* v. *Superior Court,* 90 Cal. 101 [27 P. 49].) Experience has shown that most of the meritorious defenses are sustained and most of the unsubstantial constitutional or other objections are weeded out at the proper time on the proper

showing during the trial or on appeal. These remedies are therefore considered adequate in the usual situations. If this were not so, then whenever jurisdiction is challenged prohibition would lie and the trial of the case would be interrupted until the reviewing court passed upon the intermediate question and appellate courts in many cases would be converted into *nisi prius* courts. (*Agassiz* v. *Superior Court,* 90 Cal. 101, 103 [27 P. 49].)

It does not follow, however, that the remedies of trial and appeal must be considered adequate in all situations. It has been held in two recent cases that these remedies did not afford sufficient relief under the circumstances there presented. (*Greenberg* v. *Superior Court,* 19 Cal.2d 319 [121 P.2d 713]; *Jackson* v. *Superior Court;* 10 Cal.2d 350 [74 P.2d 243, 113 A.L.R. 1422].) In the Jackson case an attempt was made to retry the defendants on the identical charge for which they previously had been in jeopardy. In the Greenberg case there was an indictment of an individual against whom no evidence at all was presented to the grand jury. The issue of jurisdiction was first raised in both cases by motion or demurrer in the trial court and petitioners sought prohibition only after an adverse ruling below. The disregard of the fundamental rights of the defendants in these cases was so obvious and flagrant that this court felt that the expense, effort and delay of trial in the superior court would be an unfair burden on the petitioners.

[9] The fact that the remedies of trial and appeal were considered adequate in some cases and not in others does not mean that the application for the writ was arbitrarily granted in one and refused in another or that the decisions cannot be reconciled on principle. It is difficult, if not impossible, to lay down a hard and fast rule which will [fol. 96] govern all situations, and it must be determined in each case, not only on the basis of precedent but from an examination of all the facts, whether there is an adequate remedy in the ordinary course of law. A reviewing court, in order to prevent a failure of justice, has discretion in accordance with established legal principles and practice, to determine the circumstances which justify the use of prohibition to restrain a lower tribunal from acting without or in excess of its jurisdiction. And in the exercise of that discretion it may take into consideration the

desirability of the prompt settlement of an important jurisdictional question so that a multiplicity of void proceedings in other cases will be prevented.

[10] As heretofore pointed out, petitioner Murdock has been subjected to two trials and has successfully prosecuted two appeals from judgments of conviction. We granted a hearing in this matter after petitioners' application for a writ to restrain a third trial was denied by the district court of appeal, and, in order to secure uniformity of decision of related problems, transferred to this court the appeal in *Gospel Army* v. *City of Los Angeles*, [1] 27 Cal.2d 232 [163 P.2d 704], in which plaintiff sought to enjoin the enforcement of the same ordinance. We should not under these circumstances, in fairness to petitioner or respondent court, refuse to decide in this proceeding the jurisdictional question involved in the criminal charges, on the ground that there is a plain, speedy and adequate remedy by trial and appeal.

We come, therefore, to the question whether the sections of the Los Angeles Charities and Relief Ordinance under which Murdock is charged are unconstitutional. In the Gospel Army case, *supra*, [2] page 232, we examined this legislation and some of the basic problems here involved are answered by our decision in that case, but we did not have occasion to deal specifically with one of the sections of the ordinance under which Murdock is charged. A certain amount of repetition of our discussion in the Gospel Army case is unavoidable if we are to present in an orderly and understandable manner the issues raised by petitioners' contentions in this proceeding.

Insofar as pertinent here, the ordinance provides that no person shall solicit any contribution for any charitable purpose unless there shall be filed with the Department of Social Service written notice of intention to solicit, to- [fol. 97] gether with information concerning the character of the solicitation, how it is to be made, and the purpose for which the funds are to be used. (§ 44.05.) [3] The de-

[1, 2] Advance Report Citation: 27 A.C. 246.

[3] Sec. 44.05. CHARITY SOLICITATION—NOTICE OF INTENTION:

No person shall solicit, nor shall any officer or member of any association authorize any person to solicit, any

partment is authorized to investigate the statements made by the applicant and to issue information cards setting forth such facts as may be necessary to acquaint the public with the nature and worthiness of the purpose for

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contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

(a) The purpose of the solicitation and use of the contribution to be solicited;

(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless or from what funds such expenses are payable;

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true and correct copy of the original of such resolution by the

which the solicitation is made. (§ 44.03.)[1] The solicitor is required to exhibit the information card and read it to [fol. 98] the person solicited, or present it for his perusal

officer of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation.

[1] Sec. 44.03." POWERS OF DEPARTMENT:

The Department shall have the following powers:

(a) To investigate the allegations of Notice of Intention, or any statement or reports;

(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made;

(c) To investigate at any time the methods of making or conducting any such solicitation;

(d) To issue to all solicitors Information Cards which cards shall show:

(1) That same is issued as information for the public and is not an endorsement;

(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;

(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;

(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made;

(e) To charge a fee for supplying Information Cards, at the rate of four cents per card; provided that when more than twenty-five cards are issued at one time for the same solicitation, the fee for all such cards in excess of twenty-five shall be one cent per card.

before accepting a contribution. (§ 44.12.)[1] It is incumbent upon persons soliciting contributions for charity by means of receptacles in certain specified publicly owned and controlled places to secure the express written permission of the Board of Social Service Commissioners (§ 44.09(a).)[2] and anyone making such solicitations by means of receptacles in certain other places open or accessible to the public is required to file a "notice of intention" as required by section 44.05. (§ 44.09(b).)[2]

The ordinance is designed to protect the public from fraud and deception in the solicitation of funds for charity and to provide the public with information from which it may determine the nature and worthiness of the charitable purpose for which the collection is made. The regulatory provisions apply to all charitable solicitations, and though collections made solely for missionary, evangelical and

[1] Sec. 4412. SOLICITATION—INFORMATION CARD:

No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person solicited or presents it to said person for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited.

[2] Sec. 4409. [As amended by Ordinance No. 84,121, approved Feb. 5, 1941.] SOLICITATION—BOXES—RECEPTACLES.

(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by the express written permission of the Board.

(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a "notice of intention" as required by Sec. 44.05, and every person so soliciting must, in all other respects comply with the provisions of this Article.

other religious purposes are exempted therefrom, it is clear that the intent is to regulate charitable solicitations [fol. 99] whether or not they are part of a religious program. In the Gospel Army case, *supra*, [1]page 232, we held that the prior restraint thus imposed does not contravene the liberties guaranteed by the First Amendment.

In *Reynolds* v. *United States*, 98 U.S. 145, 164 [25 L.Ed. 244], Chief Justice Waite, in commenting upon a statement of Thomas Jefferson concerning the meaning of the First Amendment, to the effect "that the legislative powers of the government reach actions only, and not opinions," said: "Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order." Mr. Justice Roberts in *Cantwell* v. *Connecticut*, 310 U. S. 296, 303-304 [60 S.Ct. 900, 84 L.Ed. 1213; 128 A.L.R. 1352], restated the rule in clear and simple language, as follows: "Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society."

[11] There can be no question, therefore, that a person is free to hold whatever belief his conscience dictates, but when he translates his belief into action he may be required to conform to reasonable regulations which are applicable to all persons and are designed to accomplish a permissible objective. (*Gospel Army* v. *City of Los Angeles*, *supra*, [1]p 232.)

Petitioners allege that Murdock was charged with having violated sections 44.09 and 44.12 of the Charities and Relief Ordinance.

Section 44.12, requiring a solicitor to exhibit an information card to the person solicited, was approved in the Gospel Army case, *supra*, [2]page 232. We held in that case that information cards issue automatically upon the filing of the required information and the payment of the four cents for each card, and that the department is without authority to withhold such cards when the require-

[1]Advance Report Citation: 27 A.C. 246.
[1, 2]Advance Report Citation: 27 A.C. 246.

ments are met. What we said there disposes of petitioners' contentions here with respect to the validity of the charge against Murdock based on this provision.

[12] We had no occasion in the Gospel Army case, however, to give specific consideration to section 44.09 which [fol. 100] underlies the other charge pending against Murdock. Subdivision (a) of this section makes it incumbent upon persons soliciting contributions for charitable purposes *by means of receptacles in certain specified publicly owned or controlled places* to secure the express written permission of the board. It is well known that religious and charitable organizations frequently use receptacles to collect money from individuals in public places. It is obvious that it would be exceedingly difficult to obtain contributions in congested areas if the solicitor had to present each person solicited with an information card. It is apparent also that it would be hard to enforce a requirement of that kind under such circumstances.

When section 44.09(a) is read in the light of these circumstances and difficulties which give rise to the necessity for the requirement of a permit when contributions are to be solicited by receptacles, sufficient standards for the issuance of such permit are inherent in and follow from the reasons requiring it. While persons solicited by means of an information card are thereby sufficiently advised to discern any unfair or fraudulent scheme, passers-by solicited by means of receptacles have no similar chance of protecting themselves. Hence, if fraud appears from the information secured from those seeking to solicit by means of receptacles, the board should decline to issue a permit. Otherwise, solicitation by this method would secure financial support that unquestionably would be denied if the solicitation were made by use of an information card which disclosed the fraud to the persons solicited. In addition to protection against fraud, the requirement of a permit to solicit charitable contributions in public places by means of receptacles, assures protection with respect to the maintenance of the public convenience and safety for it is conceivable that solicitation by this method under some conditions would interfere with the free flow of traffic. We conclude, therefore, that if subdivision (a) of section 44.09 is read, as it

must be, in light of the purpose and context of the entire ordinance, on the one hand, and the peculiar circumstances attendant upon collections by means of receptacles in public places, on the other hand, that the denial of a permit is warranted only if the information furnished to the board discloses fraud or if the solicitation as planned would interfere with the public convenience and safety. So construed, the standards applicable to the granting of the permit are reasonable and the condition imposed by subdivision (a) does not prevent or unduly restrict the collection of funds. The requirement of the subdivision is not only reasonable but assures regulation without dis- [fol. 101] crimination as to persons or causes. It may be added that the numerous other recognized methods of collecting funds are available to petitioner.

It is suggested that subdivision (a) imposes the same restraint as did the statute condemned in *Cantwell* v. *Connecticut*, 310 U. S. 296 [60 S.Ct. 900, 84 L.Ed. 1213, 128 A.L.R. 1352]. That statute prohibited solicitation of money for religious, charitable or philanthropic causes without the approval of an administrative official. The ordinance challenged in this proceeding, however, is materially different from the statute involved in the Cantwell case. The statute there condemned empowered an administrative official to appraise the facts and to withhold permission to solicit if he determined the cause was not a religious one. The court held that to so limit the right of solicitation placed a forbidden burden upon the exercise of religious liberty.

It is clear, however, from what has been said before that the right to the permit required in subdivision (a) of section 44.09 does not depend upon a religious test. The board is not authorized or empowered to appraise the nature or worthiness of a religious cause or to deny a permit upon the ground that the cause is not a religious one. As before stated, the authority of the board is limited to regulating the issuance of permits for the solicitation of funds in the designated publicly owned or controlled places *by means of receptacles* for the sole purpose of preventing fraudulent practices and protecting the safety and convenience of the public. It is held in the Cantwell case that "a State may by general and non-discriminatory legislation regulate the times, the places, and the manner

of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment. . . . The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise." (310 U. S. 304, 305.)

Subdivision (b) of the section relates to the solicitation of charitable contributions by means of receptacles in certain specified places not included in subdivision (a). In such cases the solicitor is required to give the "notice [fol. 102] of intention" provided for in section 44.05. That section was approved in the Gospel Army case and for the reasons there stated the requirements of section 44.12 are valid.

Petitioners further contend that the ordinance is being unconstitutionally applied as to them. The allegations relied upon in support of this contention, however, are denied by the answer and the issues of fact thus presented will not be determined by us in this proceeding.

We conclude, therefore, that the provisions of the ordinance underlying the charges against Murdock are constitutional, and that in the absence of admitted or proven facts showing that the ordinance is being unconstitutionally applied, the alternative writ must be discharged and the peremptory writ must be denied. It is so ordered.

Shenk, J., Traynor, J., and Spence, J., concurred.

DISSENTING OPINION

CARTER, J., Dissenting.—I agree that the instant case is a proper one for review by a writ of prohibition but I cannot agree with the reasoning followed by the opinion of Chief Justice Gibson in arriving at that result.

It is fundamental that a court, whether it is a trial or appellate court, has the jurisdiction to determine its own jurisdiction. (*In re Grove Street*, 61 Cal. 438; *Clary* v. *Hoagland*, 6 Cal. 685; *Cohen* v. *Barrett*, 5 Cal. 195; *In re*

Meisner, 30 Cal.App.2d 290 [86 P.2d 124]; *In re Wyatt*, 114 Cal.App. 557 [300 P. 132]; *Fitzpatrick* v. *Sonoma County*, 97 Cal.App. 588 [276 P. 113]; *In re Tassey*, 81 Cal.App. 287 [253 P. 948]; *Dillon* v. *Dillon*, 45 Cal.App. 191 [187 P. 27]; 21 C.J.S., Courts, § 113.) The general rule is stated in 21 Corpus Juris Secundum, Courts, section 113. "Every court has judicial power to hear and determine, or inquire into, the question of its own jurisdiction, both as to parties and as to subject matter, and to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction." And as a necessary corollary to that proposition it has jurisdiction to decide the jurisdictional question wrongly as well as rightly. (*Portnoy* v. *Superior Court*, 20 Cal.2d 375 [125 P.2d 487]; *In re Bell*, 19 Cal.2d 488 [122 P.2d 22]; *Truck Owners etc., Inc.* v. *Superior Court*, 194 Cal. 146 [228 P. 19]; *Morehouse* v. *Superior Court*, 124 Cal.App. 38 [12 P.2d 133].) These things are conceded by the opinion of the chief justice but it goes on to say that once it has decided the question erroneously and is proceeding to exercise that jurisdiction it may be restrained by a higher court from exercising it; that [fol. 103] at that stage jurisdiction to determine jurisdiction has been exercised, implying that *thereafter* the court does not have jurisdiction because it has decided erroneously, and hence one of the extraordinary writs for testing jurisdiction will lie. The fallacy in that reasoning lies in the assumption that at some stage in the proceeding the court suddenly steps from a possession of power to a lack of it when all of the time the basic question was present of whether or not it had jurisdiction. A court may determine its jurisdiction at any stage of the proceeding. It is always an issue before it. (*Williams* v. *Sherman*, 36 Idaho 494 [212 P. 971].) It is probably due to the thought that if a court has jurisdiction to decide its own jurisdiction correctly or incorrectly, its determination cannot be questioned by a jurisdictional writ, that leads to the idle distinction between power to determine power and the exercise of the power once a favorable determination is made. The issue need not be complicated in that fashion. It is simple. Of course a court has jurisdiction to decide its jurisdiction, and it may be right or wrong. In *either* event the jurisdictional writs lie to review its

decision to ascertain whether the conclusion was correct. We are assuming that the court in making its decision is passing upon a question of *jurisdiction*. The question still remains one of *jurisdiction* after the decision as well as before and hence the jurisdictional writs are available to review it. The higher court entertaining the writ may conclude that the lower court was correct in its result and deny relief or the opposite conclusion may be reached and relief granted.

Perhaps the reasoning in the majority opinion was adopted to escape the untenable position taken by the majority of this court in *Portnoy v. Superior Court, supra.* It was there stated, after declaring that a court had jurisdiction to determine jurisdiction (the constitutionality of a statute) erroneously: "In the present case both the justice's court and the superior court on appeal have held that the ordinance is constitutional, and it cannot be said that in so holding they had exceeded their jurisdiction." This statement is clearly contrary to the holding in the majority opinion in the case at bar. If, as conceded in the opinion of the chief justice, the issue of constitutionality goes to the *jurisdiction* of the court, then that issue is still present and the decision of the court on that issue was subject to review by certiorari. The issue thus boils down to the simple proposition that whenever a lower court decides a jurisdictional question its decision is subject to review by certiorari, prohibition, habeas corpus or [fol. 104] other appropriate writ. That must be so because the question involved goes to the jurisdiction of the court. This does not mean that the lower court will not be given the opportunity to first decide the jurisdictional question. That is a matter of procedure—a matter of whether and when the higher court deems it wise to intercede—all of which is involved in the problem of whether other remedies are adequate. It does not involve the controversy of whether a jurisdictional question is present.

This brings us to the question of whether such a question is involved in the instant case, remembering that we are not concerned with the accuracy of the lower court's decision or its power to pass upon it. The constitutionality of a statute under which a court is acting goes to the jurisdiction of the court (*Whitney v. Superior Court*, 182 Cal. 114 [187 P. 12]; *Levy* v. *Superior Court*, 105 Cal. 600 [38 P.

965, 29 L.R.A. 811]), and if it is unconstitutional, any order or judgment made or rendered pursuant thereto is void and subject to collateral attack. The situation is not different than if the crime charged had been committed outside the territorial limits of the area over which the court had jurisdiction or was a crime which was within the exclusive jurisdiction of another court. In either case the lower court would have no jurisdiction to proceed with a prosecution and a higher court could issue a prerogative writ to stay such prosecution at any point. (*Antilla* v. *Justice's Court,* 209 Cal. 621 [290 P. 43].)

The ordinance involved is clearly unconstitutional. I have set forth in my dissenting opinion in *Gospel Army* v. *City of Los Angeles,*[1] 27 Cal.2d 232, 250 [163 P.2d 704], the reasons for that conclusion and I here repeat those views.

There are additional factors applying to the particular provision of the ordinance involved in the instant case, which render such provision invalid. The provision reads § 44.09(a): "No person shall solicit *any* contribution for *any purpose* by means of any box or receptacle, upon any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by express written permission of the Board." (Emphasis added.) The language is broad and comprehensive. Giving effect to all of its language as must be done in interpreting an ordinance, it clearly reaches solicitation on public property whether the receptacle is carried by the solicitor, and there is no obstruction of traffic, or is placed in or on the public place and is under the supervision of an attendant, [fol. 105] or is left unattended. All three of those aspects of the solicitation are necessarily included in the wording and cannot be separated. If the provision is invalid as to one of them it is invalid as to all. Leaving aside for the instant the authority of the officials to give permission to solicit thereunder, that is, treating the clause as an absolute prohibition against soliciting on public property by use of a receptacle, it is clearly a violation of Murdock's right to freedom of religion. The solicitation of funds for the cause is a legitimate incident of the exercise of religious freedom. The exercise of that freedom even

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[1] 27 A.C. 246, 264.

though receptacles are used cannot be wholly limited to places other than public property. In commenting on a statute stating that no child under certain ages shall sell any magazine or merchandise on any street or in any public place, the Supreme Court of the United States stated in *Prince* v. *Massachusetts*, 321 U.S. 158, 167 [64 S.Ct. 438, at page 443; 88 L.Ed. 645, 653]: "Concededly a statute or ordinance identical in terms with Section 69, except that it is applicable to adults or all persons generally, would be invalid. *Kim-Young* v. *California*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; *Nichols* v. *Massachusetts*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; *Jamison* v. *Texas*, 318 U.S. 413, 63 S.Ct. 669, 87 L.Ed. 869; *Murdock* v. *Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292, 146 A.L.R. 81; *Martin* v. *City of Struthers*, 319 U.S. 141, 63 S.Ct. 862, 87 L.Ed. 1313." And later: "Street preaching, whether oral or by handing out literature, is not the primary use of the highway, even for adults. While for them it cannot be wholly prohibited, it can be regulated within reasonable limits in accommodation to the primary and other incidental uses."

The fact that solicitation may be made under section 44.09(a) by express permission of the public officials does not save it: Where a statute is void on its face, such as is true of subdivision (a), the mere fact that an official may give consent to the conduct does not cure it when, as far as appears, the discretion of the official is uncontrolled—is guided by no valid signposts and he may act arbitrarily. Nor need a permit be sought under such circumstances as a prerequisite to raising the constitutional question. (See *Cantwell* v. *Connecticut*, 310 U.S. 296 [60 S.Ct. 900, 84 L.Ed. 1213, 128 A.L.R. 1352]; *Schneider* v. *State*, 308 U.S. 147 [60 S.Ct. 146, 84 L.Ed. 155]; *Hague* v. *C. I. O.*, 307 U.S. 496 [59 S.Ct. 954, 83 L.Ed. 1423]; *Lovell* v. *Griffin*, 303 U.S. 444 [58 S.Ct. 666, 82 L.Ed. 949]; *Smith* v. *Cahoon*, 283 U.S. 553 [51 S.Ct. 582, 75 L.Ed. 1264]; *cf. Cox* v. *New Hampshire*, 312 U.S. 569, 577-578 [61 S.Ct. 762, 85 L.Ed. 1049, 133 A.L.R. 1396].)

[fol. 106] There are no standards whatsoever which the enforcing officials must follow in determining whether the permit shall be issued. The legislative body has made no determination that traffic dangers are to be avoided or fraud prevented. The refusal of the permit is not con-

ditioned on any traffic hazard or obstruction or that the solicitor is engaged in a fraudulent scheme. In *Hague* v. *C. I. O.*, 307 U.S. 496 [59 S.Ct. 954, 83 L.Ed. 1423], the issue was the validity of an ordinance which denied use of the streets without a permit giving no standards to the officials. The court said, at page 516: "*It does not make comfort or convenience in the use of streets or parks the standard of official action.* It enables the Director of Safety to refuse a permit *on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage.'* It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs, *for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right.*" (Emphasis added.) In the instant case, we have freedom to exercise one's religion—a right in the same class as freedom of speech. Here the ordinance does not make convenience or use of public streets a test for the standard of official action. The permit may be denied on the "mere opinion" of the official that fraud or traffic hazards may occur.

The note in 128 A.L.R. 1361 is illuminating: "While there is a conflict among the state court decisions as to the validity under the Fourteenth Amendment to the Federal Constitution of statutes or ordinances regulating the solicitation of contribution for charitable, religious, or individual purposes by prohibiting such solicitation without a license and providing that the licensing officer or body shall issue such a license only where he deems the applicant a worthy person and his cause a worthy or bona fide cause, *it is now settled by decisions of the Supreme Court of the United States that such a statute or ordinance is void, since it authorizes a previous restraint upon the free exercise of the freedoms guaranteed by the Fourteenth Amendment by a licensing officer or body having no fixed standard for determining whether a license must be issued.*" (Emphasis added.)

It is aptly said in *Schneider* v. *State*, 308 U.S. 147, 163 [60 S.Ct. 146, 84 L.Ed. 155]: "It bans unlicensed communication of any views or the advocacy of any cause

from door to door, and permits canvassing only subject to [fol. 107] the power of a police officer to determine, as a censor, what literature may be distributed from house to house, and who may distribute it. *The applicant must submit to that officer's judgment evidence as to his good character and as to the absence of fraud in the 'project' he proposes to promote or the literature he intends to distribute,* and must undergo a burdensome and inquisitorial examination, including photographing and fingerprinting. In the end, his liberty to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion." (Emphasis added.) (See, also, *Hoyt Bros. Inc.* v. *Grand Rapids,* 260 Mich. 447 [245 N.W. 509].)

The only answer offered by the majority opinion to the lack of a standard for the issuance of permits is that as a test for the denial of permits there must be either fraud or an interference with the public safety or convenience. There is no mention whatsoever of those tests in section 44.09(a). The board is given unlimited power in passing upon an application for a permit. The majority opinion by judicial legislation places those standards in the ordinance. This attempt to unearth vague and uncertain standards *cannot stand in the face of this court's decision in In re Porterfield,* [1]*ante,* p. —— [168 P.2d 706]. This court there struck down an ordinance requiring a license (permit) to solicit, and quoted with approval from American Law Reports as follows (page[2] ——): "A statute or ordinance which vests arbitrary discretion with respect to an ordinarily lawful business . . . in public officials, without prescribing a uniform rule of action, or, in other words, which authorizes the issuing or withholding of licenses . . . according as the designated officials arbitrarily choose, without reference to all of the class to which the statute or ordinance under consideration was intended to apply, and without being controlled or guided by any *definite* rule or *specified* conditions to which all similarly situated might knowingly conform,—is unconstitutional and void." (Emphasis added.) The court then went on to say (the ordinance there was much more explicit in its

[1]Advance Report Citation: *Ante,* p. 102.
[2]Advance Report Citation: *Ante,* p. 121.

standards than in the instant case) that (p. 121) "It is to be noted that section 4 of the ordinance requires that application for a license be made in writing 'upon such forms as may be provided by said city council, a copy of which shall at all times be attached to said license.' The ordinance is utterly silent as to what the content of the forms [fol. 108] shall be." *No form whatsoever provided in the case at bar.* Continuing in the Porterfield case: "Section 6 provides that at the hearing to be held by the council on each application for a license, evidence shall be received of the *good moral character* of the applicant and *whether or not he is likely to resort to force, violence, threat, menace, coercion,* intimidation or corrupt means in his proposed work of solicitation. 'If the city council is satisfied that said applicant is of good moral character and will not resort to force, violence, threat, menace, coercion, intimidation or corrupt means in his proposed work of solicitation, it shall direct the issuance of a license to said applicant for said purpose of solicitation upon payment of the license fee herein provided for.'" *In the case at bar there is no mention of moral character or character of a kind likely to indulge in violence, as a standard for issuing a permit. No standard whatever is set forth.* Commenting on the terms of the ordinance there involved it is said in the Porterfield case (page [1]——): "We are of the opinion that on the face of the ordinance *the indefinite standards which it enunciates provide a mechanism for the deprival of constitutional rights,* not only on the basis of the guaranties applicable to free speech but also on the basis of those protecting the right to engage in lawful fashion in a lawful activity. It is pointed out by petitioner that the council members in the exercise of their power might very conceivably conclude that because of an applicant's labor union affiliations or because of his attitude upon controversial labor issues he did not have the prescribed qualities. It is entirely possible that on occasion a majority of the council might be members of a rival labor union or they might be employers engaged in a controversy with the union represented by the applicant. Certainly the standard provided by section 6 of the Redding ordinance is entirely subjective. Each council member is

[1] Advance Report Citation: *Ante,* p. 122.

left to determine in his own mind what is 'likely' to be the future conduct of the applicant. The character or extent of showing necessary to satisfy the council that the applicant is of good moral character and will not resort to the activities mentioned is not set forth. Satisfaction may be circumscribed by individual whim, caprice, or personal prejudice."

The ordinance in the case at bar cannot stand in the face of the tests applied in the Porterfield case. The ordinance involved in that case sought to place restrictions upon the constitutional right of freedom of speech. The [fol. 109] ordinance in the case at bar seeks to restrict the constitutional right of freedom of religion. The ordinance in each case reposes in a board uncontrolled discretion to exercise arbitrary power in acting upon applications for permits to exercise such constitutional rights. The ordinance in the Porterfield case was held unconstitutional on that ground. It follows that the ordinance in the case at bar should likewise be held unconstitutional insofar as it trenches upon the constitutional right of petitioner herein.

In my opinion the writ should issue as prayed.

SCHAUER, J.—I concur in the conclusion reached by Mr. Justice Carter and in the discussion supporting his conclusion insofar as it relates to the constitutionality of the ordinance involved herein.

EDMONDS, J.—For the reasons stated by me in the Gospel Army case, I am of the opinion that section 44.09 of the Los Angeles ordinance, as well as the provisions which were considered in the prior proceeding, are unconstitutional. Accordingly, I join in the conclusion that the writ of prohibition should issue.

[fol. 110] [File endorsement omitted.]

[fol. 111] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR REHEARING—Filed July 11, 1946

To the Honorable the Supreme Court of the State of California:

Petitioners above named respectfully request and urge a rehearing of this appeal.

Reasons for the petition are:

1. The majority opinion and the decision of this Court indulges in judicial legislation without which the conclusion reached would have no foundation.

2. Said opinion is in apparent irreconcilable conflict with other leading decisions of this Court from which situation great confusion as to the law therein written results.

3. The instant decision and opinion errs in failing to recognize that sections of the ordinance involved are so dependent upon and interwoven with other sections thereof and the whole scheme and plan of said law that they [fol. 112] cannot be segregated and judicially appraised alone.

4. Said opinion and decision fails to consider questions presented by the petitioners without which a full and complete decision cannot be rendered.

Petitioners Specify the Following Grounds for Rehearing:

(a) The opinion and decision herein adds to Section 44.12 of the ordinance involved, a provision of law which reads: "The denial of a permit is warranted only if the information furnished the Board discloses fraud or if the solicitation as planned would interfere with the public convenience and safety."

(b) By adoption from the opinion in Gospel Army v. City of Los Angeles (recently delivered) the instant opinion enacts that "the department is without authority to withhold such cards (inspection cards) when the requirements are met," to-wit, "the filing of the required information and payment of four cents for each."

II

(a) Said opinion is so at variance with the recent decision in In re Porterfield, 28 A.C. 102, that the conclusion [fol. 113] seems inescapable that both cannot be sound and it is highly important that in the interest of the dispensation of even handed justice and the unscrambling of the points of conflict elucidation thereof is essential. (See Justice Curtis' dissenting opinion:)

(b) A similar condition exists in an even more extreme degree as to the instant decision and In re Darte, 172 Cal. 47, which decision, if accepted as the law, would compel an order granting the writ herein. (Petitioners' briefs herein and points and authorities re the petition.)

III.

The instant opinion errs in that it gives scant attention to sections of the ordinance other than 44.09 and 44.12, and none to the general plan and design of the law, although said sections, standing alone, and as applied to all solicitations, including those for religion, would be clearly violative of the 14th Amendment to the Federal Constitution as creating prior restraints upon the exercise of the right of religious freedom and as delegating to an administrative board powers to act unreasonably, arbitrarily and with partiality.

(a) Section 44.09, as pointed out in the dissenting opinion by Mr. Justice Carter contains three inhibitions. [fol. 114] That contained in 44.09 (a) is clearly applicable to the instant case since the solicitations by Murdock for the Rescue Army concern religious activities, and the provisions for charities are expressly set forth in subdivision (b).

Section 44.09 (a) prohibits all solicitations through receptacles on public streets, etc., except with the "express written permission of the Board." Hence the Board is unrestricted as to the exercise of its discretion. The said 14th Amendment, itself, permits such solicitations for religion, but the section permits the Board to refuse them at its own unbridled discretion or groundless whimsy.

(b) Section 44.12 applies to all solicitation for charitable purposes. The ordinance purports to regulate them.

However, its classification and definition of charities includes religious purposes if any fraction of the money or goods is to be used for charity. (Section 44.16.)

Also, to "exhibit an information card" as Section 44.12 requires, involves the prior securing of such card (Section 44.03). This much the opinion herein notices, but it fails to consider numerous other sections necessarily involved in securing such card.

True, said opinion refers to the Gospel Army opinion [fol. 115] in this behalf, but that opinion failed entirely to analyze or elucidate such other sections although the dissenting opinions in that case perform that function and unanswerably show that separately, and as a whole, prior restraints upon the exercise of the right of freedom of religion and of charity of a prohibitive, arbitrary and highly prejudicial character are created.

IV

(a) The opinion herein is defective and errs in that it fails to consider the assignment in the petition that the provision of said ordinance which authorizes the Department of Social Service to "approve" such charitable associations" as it deems are entitled to approval and thereby exempt them and their solicitors from all of the procedural requirements of the ordinance, including those in Sections 44.12 and 44.09, empowers said Department to grant immunities and privileges to a class while denying the same to others in violation of said 14th Amendment and of Article I, Section 21 of our State Constitution.

This issue is directly involved in the instant appeal.

(b) Said opinion and decision, in holding Sections 44.09 and 44.12 constitutional, fails to consider that in order [fol. 116] to obtain the "Information Card" required therein the applicant must file a notice of intention, of a voluminous character, supply any and all "additional information" which the Department sees fit to demand[1]; wait while said Department conducts an investigation of unlimited scope, if it chooses to do so; have the written

[1]Section 44.06.

authorization of the person or organization he represents, and he or it must maintain an accounting system.[1]

These are among the burdens to be borne prior to securing an information card to be exhibited in soliciting pursuant to Section 44.12. Legally or illegally, they are all prior restraints upon solicitation, and to pass upon the legality of Section 44.12 without considering them is to exclude the gist of the last section. Other sections add even greater burdens, after solicitations are made. Sections 44.05 to 44.16, inclusive, are one unit and Section 44.12, alone, is insignificant as a revelation of its true import and the prior restraints which it entails.

[fol. 117] (c) The petition for issuance of a writ of prohibition and the petition for hearing in this Court squarely present the issue that petitioners' activities for which Murdock is prosecuted are religious, and that to require, as the ordinance does, that they be licensed through the issuance of an "Information Card" is a clear infringement of the right to exercise religious freedom and of the 14th Amendment to the Federal Constitution, and since no such license can be lawfully made a prerequisite to solicitation for religious purposes Sections 44.12 and 44.09 are necessarily unconstitutional exactions.

The instant opinion applies these provisions of an ordinance purporting to regulate charities to religious activities. Yet no mention of the religious feature is made or justification provided by reference to the arbitrary provision of the ordinance which classifies all solicitations not "purely" religious as charitable.

Petitioners have argued to this Court that the entire ordinance, including Sections 44.09 and 44.12 are violative of the right of religious freedom by reason of said unreasonable and unwarranted classification, and, it is submitted, the validity of the last-named sections cannot be determined without consideration of the validity of the [fol. 118] "purely for religious" provision.

Petitioners have claimed that Sections 44.09 and 44.12 are rendered invalid under the equal protection of the

[1]Section 44.05, of which Justice Carter in the Gospel Army case said: "The much maligned income tax forms . . . are no more complex and demanding."

laws clause of the 14th Amendment to the Federal Constitution by the provisions of Section 44.03, which empowers the City Board to exempt others similarly situated from compliance with said Sections 44.09 and 44.12. The opinion and decision herein fails to consider this issue.

For the foregoing reasons and upon the grounds above set forth petitioners adhere to their contentions heretofore made in respect to the ordinance as a whole and Sections 44.09 and 44.12 in particular are violative of the privileges and immunities clause, the equal protection of the laws clause, and the due process guaranty of the 14th Amendment to the Constitution of the United States, and a[illegible] that a rehearing of this appeal be ordered.

Respectfully submitted, Robert H. Wallis, Attorney for Petitioners

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[fol. 119] IN THE SUPREME COURT OF CALIFORNIA

IN BANK

L. A. No. 18946.

[Title omitted]

ORDER DENYING REHEARING—July 24, 1946

Petition for rehearing denied.

Edmonds, J., Carter, J. and Schauer, J. voting for rehearing.

Dated: July 24, 1946.

GIBSON, Chief Justice.

[File endorsement omitted.]

[fol. 120] [File endorsement omitted.]

[fols. 121-183] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR APPEAL—Filed August 29, 1946

Aggrieved by the decision of the Supreme Court of the State of California duly entered and made final on the 24th day of July, 1946, discharging the alternative writ and denying the petition for peremptory writ and, claim-

ing that rights guaranteed by the Fourteenth Amendment to the Constitution of the United States are thereby violated, appellants, The Rescue Army, a corporation, and Charles T. Murdock, hereby pray that an appeal be allowed to the Supreme Court of the United States.

Robert H. Wallis, Attorney for Appellants.

[fol. 183a] Cost Bond on Appeal for $500 filed Aug. 29, 1946 omitted in printing.

[fol. 184] In Supreme Court of California

Assignment of Errors—Filed August 29, 1946

The said appellants, The Rescue Army and Charles T. Murdock, assign the following errors in the record and proceedings in said case:

I

The Supreme Court of the State of California erred in its opinion, decision and judgment in the case of The Rescue Army v. Municipal Court of the City of Los Angeles in implicitly holding (and in failing to hold to the contrary although the issue was duly presented in the petition and petitioners' briefs) that the "Charities and Relief" ordinance of said city is a valid exercise of the police power and is not, as applied to religious organizations, and especially to said Rescue Army and Charles T. Murdock, violative of the right to exercise freedom of religion, guaranteed by the Fourteenth Amendment to the Federal Constitution, and that it does not arbitrarily and unreasonably, and by its mere fiat, segregate all religious-charitable activities of such organization from the missionary, evangelical and religious activities of such organization, and that it does not impose upon all religious-charitable activities of such organizations unreasonable, burdensome and time-consuming prior restraints, and that its provisions do not delegate to an administrative board and its agents power to deny such organizations the exercise of religious freedom without [fol. 185] legislative standards to control their decision.

The Supreme Court of the State of California, by its opinion, decision and judgment, erred in holding that

Section 44.09(b) of said Charities and Relief Ordinance of said City of Los Angeles (being Chapter 4, Article 4 of the Municipal Code thereof) is reasonable, valid and constitutional and that it does not violate any clause of the Fourteenth Amendment to the Constitution of the United States, and said opinion, decision and judgment erred in that said Court therein and thereby failed and refused to decide and hold that said section infringes the privileges and immunities, the equal protection of the laws and the due process clauses of said Constitution, in that said section requires that any person who solicits any contribution for any charitable purpose in the public places specified therein, to comply with *all of the other sections of said ordinance,* among which other sections are provisions clearly violative of every guaranty and clause in said Fourteenth Amendment, many of which violations and provisions will be identified and specified in succeeding assignments of error herein.

III

Said opinion and decision errs in construing said ordinance in that it enacts by judicial legislation a provision not written into any section thereof by the law, reading in substance as follows: The Department is without authority to withhold such information cards when the [fol. 186] required information has been filed and payment of four cents for each information card has been made; and said opinion and decision, based in part on such extraneous provision, thereby violates the due process clause of said Fourteenth Amendment and the right of freedom of religion and the exercise thereof by petitioners.

IV

Said opinion and decision errs in construing Section 44.09 of said ordinance in that it adds, by unwarranted judicial legislation, the following provision:

"The denial of a permit is warranted only if the information furnished the board disclosed fraud, or if the solicitation as planned would interfere with public convenience and safety,"

and said judicial legislation and the opinion and decision based thereon, to-wit, that said section, construed as con-

taining said added provision, is a reasonable and valid regulation, is non-discriminatory and does not invade the liberties protected by the Fourteenth Amendment to the Federal Constitution, constitutes an infringement of the right of freedom of religion and a violation of due process of law guaranteed by said Fourteenth Amendment; and it is further assigned as error and as violative of said constitutional provisions in that said Supreme Court failed and refused to hold that said section, without or with said added provision, is unreasonable, that it em- [fol. 187] powers said board to arbitrarily and capriciously and without guide or standard deny permission to solicit for charitable or religious organizations and to discriminate between applicants for permits and between the causes for which solicitations are planned, in violation of all clauses and provisions of said Fourteenth Amendment.

V

The said Supreme Court erred in its opinion, decision and judgment in said case in holding that said ordinance requires the Department of Social Service to issue the permit or Information Card, which all solicitors must have before soliciting donations for charities, upon the filing of the information required by said Department and the payment of 4¢ for each card, although by referring to the decision in The Gospel Army case, said opinion recognizes that no express provision of said ordinance so provides.

VI

The said Supreme Court erred in its opinion, decision and judgment in holding, by referring to said opinion in The Gospel Army case, that the provisions of said Section 44.02 of said ordinance, which authorize said board to "recall every such information card and amend or correct the same" and require the person who files it, or association on whose behalf the Notice of Intention was filed, to return said card and to present the recalled information card within 48 hours after receiving notice [fol. 188] to return it, are reasonable and valid and not burdensome, and said Supreme Court erred in failing and refusing to hold that said provisions are unreasonably time-consuming and burdensome and infringe the rights

of solicitors of donations and associations on whose behalf such solicitations are made to the exercise of the right of freedom of religion and constitute prior restraints upon the exercise of such rights, and of the right to engage in charitable activities, as guaranteed by the Fourteenth Amendment to the Federal Constitution, and in holding that Section 44.02 of said ordinance is reasonable and not burdensome, and is valid in empowering the board to publish the results of investigations by the department pertaining to applications for permits to solicit and the allegations of the Notice of Intention and to give publicify to any such results by such means as may be deemed best to reach the general public, and persons interested, and said opinion, decision and judgment erred in failing and refusing to hold that said provisions permit unreasonable delays and constitute prohibitive burdens upon the exercise of religious and charitable activities and the freedom of religion and the right to be charitable, in contravention of the due process clause of the Federal Constitution.

VII

The said Supreme Court erred in its opinion, decision and judgment in said case in holding valid and constitutional the provision in Section 44.03 of said ordinance [fol. 189] which provides that in issuing an information card, (permit to solicit) said department has power to show in said card that such issuance is "not an endorsement" or to state that "they endorse such charitable association," and said Supreme Court erred in failing and refusing to hold that said provision is a nullity on the ground that it delegates to the department power to endorse or refuse to endorse, arbitrarily and capriciously, since no reasonable standard is provided to guide and control its decision, thus violating the due process clause of the Federal Constitution; also, on the ground that said enactment creates two classes of permits and of charitable associations, the endorsed and the unendorsed, and arbitrarily and unreasonable denies to the latter the privileges and protection which it grants to the former, in violation of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution.

VIII

Said Supreme Court erred in its opinion, decision and judgment in said case in holding valid and constitutional the provisions of said ordinance in Section 44.03 thereof, which provides that upon the filing of a Notice of Intention (petition for permit) to solicit with said department, before acting on said petition, said department is authorized to investigate the allegations of said petition, or Notice of Intention, and to "have access to and inspect and make copies of all books, records and [fol. 190] papers of such person, by or on whose behalf any solicitation is to be made," and said Supreme Court so erred, as aforesaid, in failing and refusing to hold that each and all of said actions so authorized to be taken by said department are unreasonable and constitute arbitrary and onerous limitations upon the right to solicit for charity, and are prior restraints upon the exercise of the right of freedom of religion, and contravene the Fourteenth Amendment to the Federal Constitution upon both of these grounds.

IX

Said Supreme Court erred in its opinion, decision and judgment in said case in holding valid the provision in Section 44.03 of said ordinance which authorizes the said department, in issuing to an applicant for a permit to solicit, called therein an Information Card, to set forth therein information secured by independent investigation concerning the applicant, of which he has not been apprized or had opportunity to refute or explain which "in the opinion of the Board" shall be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made," and said Court erred in its opinion, decision and judgment in failing and refusing to hold that said provision is not void and does not violate the due process clause of the Federal Constitution for each of the following reasons:

1. That it empowers the defendants Board and Department to deprive the applicant of a property right [fol. 191] and property without due process of law;

2. That it provides no guide or standard by which said Board and said Department shall determine what infor-

mation will be of assistance to the public to determine the nature and worthiness of the charitable purpose for which the solicitation is to be made;

3. That it constitutes an unreasonable and burdensome previous restraint upon the exercise of the right to solicit for charitable purposes;

4. That as applied to solicitations which are an integral part and in furtherance of the purely religious activities of a religious organization, and as applied to the Rescue Army and its solicitors and to said Murdock, it constitutes a prohibitive prior restraint upon the exercise of the right of freedom of religion.

X

Said Supreme Court erred in its opinion, decision and judgment in said case in holding to be valid and not violative of the right of religious freedom or of the right to engage in charitable activities the provisions of Section 44.05 of said ordinance, which provide as follows:

"No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days [fol. 192] prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures [fol. 193] or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commission or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

Said Supreme Court erred in its opinion, decision and judgment in failing and refusing to hold that each of the provisions of this section constitute a prior restraint upon the exercise of the right of religious freedom, and of the right to engage in charitable activities, and to hold that said prior restraints are inhibited by the Fourteenth [fol. 194] Amendment to the Federal Constitution; said Court erred in failing and refusing to hold that, as applied to the Rescue Army and to its solicitors and their solicitations, each and all of said provisions are unreasonable and burdensome and time-consuming previous restraints upon the exercise by each of them of the rights above set forth and violations of the said Fourteenth Amendment.

Said Supreme Court also erred in holding that Section 44.05, as applied to solicitations for charity by religious organizations, and especially by said Rescue Army, where such solicitations are used in spreading religious doctrines and as an integral part of such religious activities, said section does not create prior restraints upon the exercise of the right of religious freedom in violation of said Fourteenth Amendment.

XI

Said Supreme Court erred in its opinion, decision and judgment in holding, by referring to the decision in The Gospel Army case, adequate and valid, the provision contained in Section 44.06 of said ordinance, which empowers said Department to decide that a Notice of Intention (petition for permit) "does not disclose sufficient information for the public concerning the facts required by Section 44.05 to be set forth or concerning the person or association making such solicitation or on whose behalf such solicitation is made," and said Supreme Court also [fol. 195] erred in failing and refusing to hold that said provision is void and violates the Fourteenth Amendment to the Federal Constitution, in that it empowers the Department to act and decide capriciously and arbitrarily and unreasonable, and provides no basis or standard to control the decision involved in said provision.

XII

Said Supreme Court erred in its opinion, decision and judgment in holding, by referring to said Gospel Army opinion and by upholding Section 44.12 as valid and violative of no constitutional right, that all of the provisions of Section 44.06 of said ordinance are valid and not burdensome, which provisions require that the applicant for permission to solicit "must file with the Notice of Intention a statement of any agreement made with any agent, solicitor, promoter . . . of such solicitation, together with a copy of each agreement, which may be in writing, and, if a change is made in such agreement, applicant must within twenty-four hours file a true copy of it with the Department, and must, if requested by the Department, provide any further information which the Board may require, and, if required by the Department, the Notice

of Intention and additional information must be signed by the person intending to make such solicitation and by two officers of the association."

Said Supreme Court erred, as above set forth, and in failing and refusing to hold that said provisions are viola- [fol. 196] tive of the Fourteenth Amendment to the Federal Constitution and of the right of those who seek to engage in charitable or religious activities, because said provisions each create and constitute a burdensome bar and previous restraint upon the exercise of such persons to freely engage in both or either of said activities.

XIII

Said Supreme Court erred in its opinion, decision and judgment in holding that the provisions of Section 44.12 of said ordinance are reasonable, valid and constitutional and not burdensome, as applied to solicitors for charity, whether the solicitation be for charity alone or for charity in furtherance of religion, which provisions require that all solicitors must read the Information Card to any person solicited for donations or present it to such person and "allow him sufficient opportunity to read the same before accepting any contributions so solicited," and said Supreme Court erred in said opinion and decision in failing and refusing to hold that said provisions are so burdensome as to be prohibitive of solicitations, and are arbitrary and unreasonable prior restraints upon the exercise of the right of freedom of religion, and especially of the exercise of said right by the Rescue Army and all of its solicitors, and of their rights to engage in charitable activities, and, hence, that said provisions contravene the Fourteenth Amendment to the Federal Constitution.

[fol. 197] XIV

The said Supreme Court erred in holding that the provisions of Section 44.14 of said ordinance are not burdensome and are reasonable, valid and constitutional, which provisions require that solicitors file with the Department a report to said Department, stating the contributions secured, "in detail, all expenses of or connected with such solicitation," "exactly," for what uses and the manner in which all contributions were disbursed, and that the statement be signed by the persons or associations obligated

to file the Notice of Intention, and said Supreme Court erred in not holding and in refusing to hold that each of said requirements is burdensome and unreasonable and a prior restraint upon the freedom of religion of the Rescue Army and its solicitors and creates and constitutes a prohibited prior restraint upon the exercise of the right of religious freedom and the right to be charitable of said parties, and of all others similarly situated.

XV

The said Supreme Court erred in its opinion, decision and judgment, in that in holding valid Section 44.09(b) said opinion holds that the provisions in respect to receipts to be given for donations and the contents thereof in Section 44.15 of said ordinance are not burdensome and violative of the right of freedom of religion, and are rea- [fol. 198] sonable, valid and constitutional; said pertinent provisions are:

> "No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:
>
> "(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.
>
> "(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.
>
> "(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

XVI

Said Supreme Court, by its opinion, decision and judgment erred in failing and refusing to hold that the foregoing provisions of Section 44.15 do not constitute pro-

hibitive prior restraints upon the exercise of the right of [fol. 199] religious freedom, and upon the exercise of that right and the right to dispense charities, of the Rescue Army and its solicitors and that therefore said provisions are violative of the Federal Constitution, amendment fourteen thereof.

XVII

Said Supreme Court, by its opinion, decision and judgment erred in holding to be reasonable, valid and constitutional the provision contained in Section 44.16 of said ordinance, which segregates solicitations for charitable purposes from solicitations for evangelical, missionary or religious purposes and severs from the latter class all solicitations whose purposes are not purely evangelistic, missionary or religious, even though they are in furtherance and an integral part of religion and other religious activities, and said Supreme Court, in its opinion, decision and judgment erred in failing and refusing to hold that said provision is arbitrary, unreasonable and discriminatory, in that it attempts by law to remove activities which in fact are religious from the realm of religion and from the protection of the Fourteenth Amendment to the Federal Constitution and its guaranty of freedom of religion.

XVIII

Said Supreme Court by its opinion, decision and judgment erred in upholding as valid, constitutional, and not burdensome or unreasonable, the provisions of Section 44.46 of said ordinance which authorizes the Board of [fol. 200] Social Service Commissioners of said defendant City to investigate the matter of solicitations for solely evangelical, missionary or religious purposes and if "in the opinion of the Board" such solicitation "is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case."

XIX

Said Supreme Court, by its opinion, decision and judgment, erred in failing and refusing to hold that the last foregoing provision is not a direct violation of the right of freedom of religion and of its exercise, and that it does not permit and create a prior restraint upon and interference with the exercise of said right in violation of the Fourteenth Amendment to the Federal Constitution.

XX

Said Supreme Court, by its opinion, decision and judgment, erred in holding that said Section 44.16 does not violate the rights of religious freedom and the right of property, guaranteed by said Fourteenth Amendment, of religious organizations, and especially such rights, of the [fol. 201] Rescue Army and of its solicitors and solicitor-promoters, in that it excludes from the exemption solicitations of money and goods if any part thereof is to be applied to charities incident to religious activities or to the compensation and support of the solicitor, in that said section of the ordinance provides that solicitations "*made solely for evangelical, missionary or religious purposes*" are exempt from all other provisions of the ordinance which are challenged herein as violative of petitioners' rights, and by this provision the Rescue Army and any of its solicitors or its solicitor-promoters, who seek donations for charity are thereby also arbitrarily denied the equal protection of the laws under said Fourteenth Amendment.

XXI

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that said last-named provision does not vest in the Board unbridled power to arbitrarily and partially nullify the efforts of solicitors and promoters for religious purposes and organizations and to thereby infringe the rights of religious freedom and the acquirement of property in violation of said Fourteenth Amendment, of promoters and other solicitors for such organizations and purposes, and especially, such rights of the Rescue Army and of its promoters and other solicitors.

XXII

Said Supreme Court, by its opinion, decision and judg-[fol. 202] ment in this case, erred in holding that provisions in Section 44.19(2)(a), (b) and (c), and subsection 3, are not burdensome and do not constitute prior restraints, and are reasonable, valid and constitutional. Said provisions are: "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without a license from the Board so to do.

"(2) Application.

"To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application the applicant shall set forth, in addition to such information as may be required by the Board:

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation, that each of its managing officers and agents is of good character and reputation, or if the [fol. 203] applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation;

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter."

Subsection (3) requires the applicant to post a bond in the sum of $2,000.00, to insure payment of any "direct pecuniary loss sustained through any theft on the part of the principal."

XXIII

Said Supreme Court, by its opinion, decision and judgment in this case, erred in upholding Section 44.19, subsection (4), which requires the applicant for a promoter's license to pay a fee of $25.00 to said Board of Social Service Commissioners, and subsection (5) authorizes said Board to make such further investigation of the applicant and of "his affairs" as the "Board may deem advisable," and "if from such examination the Board shall be satisfied that the applicant is of good character and reputation," has "sufficient financial responsibility to carry out obligations incident to any solicitation such as applicant may make," that his statements in his application "are true," etc., the application shall be granted. "Otherwise, the Board shall refuse to issue the license."
[fol. 204] Said Supreme Court erred in holding and adjudging that the foregoing provisions are valid and constitutional and are not burdensome but are reasonable as applied to promoter-solicitors for charities and for religious organizations, donations to which are used in furtherance of their religious activities and especially to said Rescue Army and its promoter-solicitor.

XXIV

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the provision of Section 44.19(3) which empowers the Board to make such investigation of the applicant and "his affairs" "as they deem advisable" and from such examination to base their determination of his qualifications to be granted a license, is reasonable and not vague in its delegation of powers and standards for their use and it erred in failing and refusing to hold and adjudge that said provision is not violative of due process under the Fourteenth Amendment to the Federal Constitution because it fixes no standard and authorizes said Board to make its decision upon matters wholly irrelevant to the purpose of the inquiry and to discriminate against some and favor others.

XXV

Subdivision 5 of Section 44.19 provides that the Board may examine the application and investigate the appli-

cant and his affairs as the Board deems advisable and [fol. 205] shall issue a license "to solicit as a promoter" contributions within said city if the Board is satisfied that the applicant is of good character and reputation and has sufficient financial responsibility to carry out the obligations incident to any solicitation to be made as such promoter, etc.

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that said provisions can be made to apply to a solicitor of donations for a religious organization, which donations are to be used and are used in furtherance of the religious activities of said organization, including its charities, without being an infringement of the said Fourteenth Amendment and the right of freedom of religion and the inhibitions therein against prior restraints upon the exercise thereof.

XXVI

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the provision in Section 44.01 of said ordinance which states: "No person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners of the City of Los Angeles shall be considered a promoter within the meaning of this article" is a reasonable classification and in holding that it is valid and constitutional, since said provision arbitrarily, capriciously and unreasonably exempts employees and officers of endorsed agencies from the necessity of securing permits [fol. 206] and licenses to solicit, and from all of the burdensome and time-consuming requirements under which other solicitors and promoters are compelled to solicit, and said Supreme Court erred in holding that said exempting provision is not unreasonably discriminatory and does not deny the equal protection of the laws to charitable organizations not endorsed by said Board and to their solicitors and promoters, in contravention of the Fourteenth Amendment to the Constitution of the United States.

XXVII

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the definition of the term "promoter" in section 44.01 of said ordinance,

and the provisions contained in Section 44.19 thereof pertaining to promoters, do not create and constitute an arbitrary and unreasonable classification of solicitors, and said Court erred in holding that the classification thus provided is reasonable and the standards provided are adequate, and said Court further erred in failing and refusing to hold that, since no substantial difference exists between said definition of "promoters" and the definition of "solicitors" contained in Section 44.01 of said ordinance, and since the provisions of Section 44.19 concerning promoters require promoters to obtain a "license" and to pay a substantial fee therefor, and to provide a bond of $2,000.00, and to submit to unrestricted investigation by said Board, and the mandate of Section 44.19 by-[fol. 207] which promoters must file with said Board "such information as may be required," and to submit to denial of a license upon a mere exercise of the Board's whimsy, said definition and classification of promoters as distinguished from other solicitors is arbitrary and unreasonable and denies to promoters and their assistants the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution.

XXVIII

Said Supreme Court, in its opinion, decision and judgment in this case, erred in holding that certain provisions of Sections 44.03, 44.05, 44.06 and 44.12 of said ordinance, collectively and read together, are valid, constitutional and reasonable and are not burdensome as applied to secular or religious organizations and their solicitors and promoters who solicit donations of money and articles of personal property for charitable or religious or secular purposes.

Said Section 44.12 provides that the solicitor shall read his Information Card "to the person solicited" or "present to said person for his perusal," and allow him "sufficient opportunity to read the same before accepting any contribution."

Since, pursuant to Sections 44.03, 44.05 and 44.06 of said ordinance, the contents of said Information Card (permit or license), may be of unlimited volume and must, to comply with said last-named section, be so comprehensive as to render the requirements of Section 44.12 pro-

[fol. 208] hibitive of public solicitations of donations for money or personal property to be used in furtherance of religion, said Court erred in its opinion, decision and judgment in failing and refusing to hold that each of said provisions, especially all of them together, create a system of procedure which constitutes an unreasonable, burdensome and prohibitive prior restraint upon the exercise by the Rescue Army and its promoter and other solicitors in the rights of religious freedom and the free exercise thereof, and the right to dispense charity and to acquire, possess and dispose of property, as guaranteed by the Fourteenth Amendment to the Federal Constitution.

XXIX

Said Supreme Court, in its opinion, decision and judgment erred in that, as to each of the foregoing Assignments of Error, said Court failed and refused to hold that the error assigned has violated the right of said Rescue Army, as created and guaranteed by the Fourteenth Amendment to the Constitution of the United States, to freedom of religion and to the free exercise thereof and the right to dispense charity and to receive donations for charitable purposes through its promoter and solicitor, whether such activities be in furtherance of religion alone, or for charity alone, or for both.

For which errors as above assigned appellants pray that said judgment of the Supreme Court of the State of [fols. 209-242] California dated June 26, 1946, and finally entered and made, by the denial of appellants' petition for rehearing on July 24, 1946, reversing the judgment of the trial court, be reversed, and that a judgment be rendered in favor of appellant and for costs.

The Rescue Army By E. L. Wheeler, Appellants.
Charles T. Murdock. Robert H. Wallis, Attorney for Appellants.

[fol. 243] [File endorsement omitted.]

[fol. 244] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 29, 1946

Appellants, The Rescue Army, a corporation, and Charles T. Murdock, having prayed for allowance of appeal by them to the Supreme Court of the United States from the judgment made and rendered in the above entitled cause in and by the Supreme Court of the State of California on the 26th day of June, 1946, and finally entered upon denial of the petition for rehearing by The Rescue Army and Charles T. Murdock, on the 24th day of July, 1946, and from each and every part thereof, and having presented and filed their petition for appeal, Jurisdictional Statement, Assignments of Errors and prayer for reversal, pursuant to the applicable statutes and rules of the Supreme Court of the United States;

It is now ordered that an appeal be allowed, and [fol. 245] the same is hereby allowed in the above entitled case to the Supreme Court of the United States from the Supreme Court of the State of California, as provided by law; and

It is further ordered that the clerk of the Supreme Court of the State of California shall have prepared and prepare and certify a transcript of the entire record and proceedings, including the judgment and this order in said case and transmit the same to the Supreme Court of the United States at Washington, D. C., so that the Supreme Court of the United States and the Clerk thereof shall have the same within sixty days from this date.

Dated August 8, 1946.

Phil S. Gibran, Chief Justice of the Supreme Court of the State of California.

[fols. 246-248] Citation in usual form omitted in printing.

[fol. 249] [File endorsement omitted.]

[fol. 250] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PRAECIPE—Filed August 29, 1946

To the Clerk of the Supreme Court of the State of California:

You are requested to prepare the following record on appeal to the Supreme Court of the United States in the above-entitled case:

1. The Petition filed in the District Court of Appeal;
2. The Defendant and Respondent's answer to plaintiff's Petition;
3. The Demurrer to the Petition;
4. Order of the Supreme Court transferring the appeal to the Supreme Court;
5. The opinion of the Supreme Court (majority opinion);
6. Dissenting opinion of Justice Carter, concurred in by Justice Schauer;
7. Dissenting opinion of Justice Edmonds;
8. Petition for Rehearing;

[fol. 251] 9. Order denying rehearing;

10. Minutes of the Supreme Court of California in said case;
11. None Issued.
12. Petition for allowance of appeal;
13. Bond Statement of jurisdiction on appeal;
14. Assignment of errors;
15. Prayer for reversal;
16. Order allowing appeal;
17. Citation and proof of service thereof;
18. The Praecipe;
19. Proof of service on appellees of copy of petition for allowance of appeal, jurisdictional statement, assignment of errors and notice to appellee of its right to make opposition to jurisdictional statement or file motion to dismiss or affirm with Clerk of Court possessed of the Record.

Attention is called to Subdivision 3 of Rule 10 of the United States Supreme Court which reads:

"No case will be heard until a record, containing in itself, and not by reference, all papers, exhibits, depositions, or other proceedings which are necessary to the hearing, shall be filed."

Compliance with rule is requested.

Robert H. Wallis, Attorney for Appellants.

[fol. 252] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 253] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS AND DESIGNATION RE RECORD—Filed October 21, 1946

Pursuant to Rule 13, subdivision 9 of the Revised Rules of the above entitled court, appellant files with the Clerk of said Court its statement of points upon which it intends to rely and its designation of those parts of the record which it thinks are unnecessary for consideration thereof, together with proof of service of said statement and designation on appellee, as follows:

Points Upon Which Appellant Intends to Rely:

The California State Supreme Court, in its decision, opinion and judgment in the instant case, erred as set forth in the following specifications and assignments:

1. That the "Charities and Relief" ordinance of said city is a valid exercise of the police power and is not, as applied to religious organizations, and especially to said Rescue Army and Charles T. Murdock, violative of [fol. 254] the right to exercise freedom of religion, guaranteed by the Fourteenth Amendment to the Federal Constitution, and that it does not arbitrarily and unreasonably, and by its mere fiat, segregate all religious-charitable activities of such organization from the missionary, evangelical and religious activities of such organization, and that it does not impose upon all religious-charitable activities of such organizations, unreasonable, burdensome and time-consuming prior restraints, and that its provisions do not delegate to an administrative board and its agents power to deny

such organizations the exercise of religious freedom without legislative standards to control their decision.

2. In holding that Section 44.09 (b) of said Charities and Relief Ordinance of said City of Los Angeles (being Chapter 4, Article 4 of the Municipal Code thereof) is reasonable, valid and constitutional and that it does not violate any clause of the Fourteenth Amendment to the Constitution of the United States, and said opinion, decision and judgment erred and itself violates all guarantees of said amendment, in that said Court thereby failed and refused to decide and hold that said section infringes the privileges and immunities, the equal protection of the laws and the due process clauses of said Constitution; in that said section requires that any person who solicits any contribution for any charitable purpose in the public places specified therein, must comply with *all of the other sections of said ordinance*, among which [fol. 255] other sections are provisions clearly violative of every guaranty and clause in said Fourteenth Amendment, many of which violations and provisions will be identified and specified in succeeding assignments of error herein.

3. Said opinion and decision errs in construing said ordinance in that it enacts by judicial legislation a provision not written into any section thereof by the law, reading in substance as follows: The Department is without authority to withhold such information cards when the required information has been filed and payment of four cents for each information card has been made; and said opinion and decision, based in a substantial part on such extraneous provision, thereby violates the due process clause of said Fourteenth Amendment and the right of freedom of religion and the exercise thereof by appellants, and the equal protection of the laws clause of said amendment.

4. Said opinion and decision and judgment err in construing Section 44.09 of said ordinance in that it adds, by unwarranted judicial legislation, the following provision:

"The denial of a permit is warranted only if the information furnished the board discloses fraud, or if the

solicitation as planned would interfere with public convenience and safety," and said judicial legislation and the opinion and decision based thereon, to-wit, that said section, construed as containing said added provision, is a reasonable and valid regulation, is non-discriminatory [fol. 256] and does not invade any of the liberties protected by the Fourteenth Amendment to the Federal Constitution, constitutes an infringement of the right of freedom of religion and a violation of due process of law guaranteed by said Fourteenth Amendment; and it is further assigned as violative of said constitutional provisions in that said Supreme Court failed and refused to hold that said section, without or with said added provision, is unreasonable; that it empowers said board to arbitrarily and capriciously and without guide or standard deny permission to solicit for charitable or religious organizations and to discriminate between applicants for permits and between the causes for which solicitations are planned, in violation of all clauses and provisions of said Fourteenth Amendment.

5. In holding, by referring to said opinion in The Gospel Army case, that the provisions of said Section 44.02 of said ordinance, which authorize said board to "recall every such information card and amend or correct the same" and to require the person who files it, or association on whose behalf the Notice of Intention was filed, to return said card and to present the recalled information card within 48 hours after receiving notice to return it, are reasonable and valid and not burdensome, and said Supreme Court erred in failing and refusing to hold that said provisions are unreasonably time-consuming and burdensome and infringe the rights of solicitors of donations and associations on whose behalf such solicitations are made to the exercise of the right of freedom of [fol. 257] religion and constitute prior restraints upon the exercise of such rights, and of the right to engage in charitable activities, as guaranteed by the Fourteenth Amendment to the Federal Constitution, and in holding that Section 44.02 of said ordinance is reasonable and not burdensome, and is valid in empowering the board to publish the results of investigations by the department pertaining to applications for permits to solicit and the allegations of the Notice of Intention and to give publicity

to any such results by such means as may be deemed best to reach the general public, and persons interested, and said opinion, decision and judgment erred in failing and refusing to hold that said last named provisions permit unreasonable delays and constitute prohibitive burdens upon the exercise of religious and charitable activities and the freedom of religion and the right to be charitable, in contravention of the due process clause of the Federal Constitution.

6. In holding valid and constitutional the provision in Section 44.03 of said ordinance which provides that in issuing an information card (permit to solicit) said department has power to show in said card that such issuance is "not an endorsement" or to state that "they endorse such charitable association," and said Supreme Court erred in failing and refusing to hold that said provision is a nullity on the ground that it delegates to the department power to endorse or refuse to endorse, [fol. 258] arbitrarily and capriciously, since no reasonable standard is provided to guide and control its decision, thus violating the due process clause of the Federal Constitution; also, on the ground that said enactment creates two classes of permits and of charitable associations, the endorsed and the unendorsed, and arbitrarily and unreasonably denies to the latter the privileges and protection which it grants to the former, in violation of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution.

7. In holding valid and constitutional the provisions of said ordinance in Section 44.03 thereof, which provides that upon the filing of a Notice of Intention (petition for permit) to solicit with said department, before acting on the same, said department is authorized to investigate the allegations of said Notice of Intention, and to "have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is to be made," and said Supreme Court so erred, as aforesaid, in failing and refusing to hold that each and all of said actions so authorized to be taken by said department are unreasonable and constitute arbitrary and onerous limitations upon the right to solicit for charity, and as applied to appellants, are

prior restraints upon the exercise of the right of freedom of religion, and contravene the Fourteenth Amendment to the Federal Constitution upon both of these grounds.

[fol. 259] 8. In holding valid the provision in Section 44.03 of said ordinance which authorizes the said department, in issuing to an applicant for a permit to solicit or Information Card, to set forth therein information secured by its independent investigation concerning the applicant, of which he has not been apprised or had opportunity to refute or explain which, "in the opinion of the Board" shall be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made," and said Court erred in its opinion, decision and judgment in failing and refusing to hold that said provision is void and violates the due process clause of the Federal Constitution for each of the following reasons:

(1) That it empowers the defendants Board and Department to deprive the applicant of a property right and property without due process of law;

(2) That it provides no guide or standard by which said Board and said Department shall determine what information will be of assistance to the public to determine the nature and worthiness of the charitable purpose for which the solicitation is to be made;

(3) That it constitutes an unreasonable and burdensome previous restraint upon the exercise of the right to solicit for charitable purposes;

(4) That as applied to solicitations which are an integral part and in furtherance of the purely religious [fol. 260] activities of a religious organization, and as applied to said Murdock and the Rescue Army and its solicitors, it constitutes a prohibitive prior restraint upon the exercise of the right of freedom of religion.

9. Said Supreme Court erred in its opinion, decision and judgment in said case in holding to be valid and not violative of the right of religious freedom or of the right to engage in charitable activities the provisions of Section 44.05 of said ordinance, which provide as follows:

> "No person shall solicit, nor shall any officers or member of any association authorize any person to

solicit, any contribution for any charitable purpose unless * * * there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including [fol. 261] salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitations;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commission or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of [fol. 262] this Article and will require all solicitors engaged in such solicitation to read and be familiar

with all sections of this Article prior to making any such solicitation."

Said Supreme Court erred in its opinion, decision and judgment in failing and refusing to hold that each of the provisions of this section constitute a prior restraint upon the exercise of the right of religious freedom, and of the right to engage in charitable activities, and to hold that said prior restraints are inhibited by the Fourteenth Amendment to the Federal Constitution, and to hold that, as applied to said Murdock and the Rescue Army and to its solicitors, each and all of said provisions are unreasonable and burdensome and time-consuming previous restraints upon the exercise by each of them of the rights and violations of the said Fourteenth Amendment above set forth.

10. Said Supreme Court also erred in holding that Section 44.05, as applied to solicitations for charity by religious organizations, and especially by said Rescue Army and said Murdock, and where such solicitations are used in spreading religious doctrines and as an integral part of religious activities, said section does not create prior restraints upon the exercise of the right of religious freedom in violation of said Fourteenth Amendment.

11. In holding, by referring to the decision in The Gospel Army case, adequate and valid, the provision contained [fol. 263] in Section 44.06 of said ordinance, which empowers said Department to decide that a Notice of Intention (petition for permit) "does not disclose sufficient information for the public concerning the facts required by Section 44.05 to be set forth or concerning the person or association making such solicitation or on whose behalf such solicitation is made," and in failing and refusing to hold that said provision is void and violates the Fourteenth Amendment to the Federal Constitution, in that it empowers the Department to act and decide capriciously and arbitrarily and unreasonably, and provides no basis or standard to control the decision involved in said provision.

12. In holding, by referring to said Gospel Army opinion and by upholding Section 44.12 as valid and violative of no constitutional right, that all of the provisions of

Section 44.06 of said ordinance are valid and not burdensome, which provisions require that the applicant for permission to solicit "must file with the Notice of Intention a statement of any agreement made with any agent, solicitor, promoter . . . of such solicitation, together with a copy of each agreement, which may be in writing, and, if a change is made in such agreement, applicant must within twenty-four hours file a true copy of it with the Department, and must, if requested by the Department, provide any further information which the Board may require, and, if required by the Department, the Notice of Intention and additional information must be signed by the person intending to make such solicitation and by two officers of the association."

Said Supreme Court erred, as above set forth, *and in* [fol. 264] failing and refusing to hold that said provisions are violative of the Fourteenth Amendment to the Federal Constitution and of the rights of those who seek to engage in charitable or religious activities, because said provisions each create and constitute a burdensome bar and previous restraint upon the exercise of such persons to freely engage in both or either of said activities.

13. In holding that the provisions of Section 44.12 of said ordinance are reasonable, valid and constitutional and not burdensome, as applied to solicitors for charity, whether the solicitation be for charity alone or for charity in furtherance of religion, which provisions require that all solicitors must read the Information Card to any person solicited for donations or present it to such person and "allow him sufficient opportunity to read the same before accepting any contributions so solicited," and said Supreme Court erred in said opinion and decision in failing and refusing to hold that said provisions are so burdensome as to be prohibitive of solicitations, and are arbitrary and unreasonable prior restraints upon the exercise of the right of freedom of religion, and especially of the exercise of said right by said Murdock and by the Rescue Army and its solicitors, and of their rights to engage in charitable activities, and, hence, that said provisions contravene the Fourteenth Amendment to the Federal Constitution.

14. The said Supreme Court erred in holding that the provisions of Section 44.14 of said ordinance are not bur-
[fol. 265] densome and are reasonable, valid and constitutional, which provisions require that solicitors file with the Department a report to said Department, stating the contributions secured, "in detail, all expenses of or connected with such solicitation," "exactly," for what uses and the manner in which all contributions were disbursed, and that the statement be signed by the persons or associations obligated to file the Notice of Intention, and said Supreme Court erred in not holding and in refusing to hold that each of said requirements is burdensome and unreasonable and a prior restraint upon the freedom of religion of said Murdock and the Rescue Army and its solicitors and creates and constitutes a prohibited prior restraint upon the exercise of said right and their right to be charitable, and of all others similarly situated.

15. In holding valid Section 44.09 (b) said opinion holds that the provisions in respect to receipts to be given for donations and the contents thereof in Section 44.15 of said ordinance are not burdensome and violative of the right of freedom of religion, and are reasonable, valid and constitutional; said pertinent provisions are:

> "No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the
> [fol. 266] contribution, substantially the following matters:
>
> "(a) the name of the association, if any, in whose name or upon whose behalf the solicitation is made.
>
> "(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.
>
> "(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

16. Said Supreme Court, by its opinion, decision and judgment erred in holding as above stated and failing and refusing to hold that the foregoing provisions of Section 44.15 do not constitute prohibitive prior restraints upon the exercise of the right of religious freedom, and upon the exercise of that right and the right to dispense charities, of said Murdock and the Rescue Army and its solicitors and that therefore said provisions are violative of the Federal Constitution, amendment fourteen thereof.

17. In holding to be reasonable, valid and constitutional and the provision contained in Section 44.16 of said ordinance, which segregates solicitations for charitable pur- [fol. 267] poses from solicitations for evangelical, missionary or religious purposes and severs from the latter class all solicitations whose purposes are not purely evangelistic, missionary or religious, even though they are in furtherance and an integral part of religion, and said Supreme Court, in its opinion, decision and judgment erred in failing and refusing to hold that said provision is arbitrary, unreasonable and discriminatory, in that it attempts by law to remove activities which in fact are religious from the realm of religion and from the protection of the Fourteenth Amendment to the Federal Constitution and its guaranty of freedom of religion.

18. In upholding as valid, constitutional, and not burdensome or unreasonable, the provisions of Section 44.16 of said ordinance which authorizes the Board of Social Service Commissioners of said defendant City to investigate the matter of solicitations for solely evangelical, missionary or religious purposes and if "in the opinion of the Board" such solicitation "is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case," and said Supreme Court, by its opinion, decision and judgment, erred in failing and refus- [fol. 268] ing to hold that the last foregoing provision is not a direct violation of the right of freedom of religion and of its exercise, and that it does not permit and create

a prior restraint upon and interference with the exercise of said right as against appellants in violation of the Fourteenth Amendment to the Federal Constitution.

19. In holding that said Section 44.16 does not violate the rights of religious freedom and the right of property, guaranteed by said Fourteenth Amendment, of religious organizations, and especially such rights of the Rescue Army and of its solicitors and solicitor-promoters, in that said provision excludes from the exemption solicitations of money and goods if any part thereof is to be applied to charities incident to religious activities or to the compensation and support of the solicitor, because said section provides that solicitations "*made solely for evangelical, missionary or religious purposes*" are exempt from all other provisions of the ordinance which are challenged herein as violative of petitioners' rights, and by this provision said Murdock and the Rescue Army and any of its solicitors or its solicitor-promoters, who seek donations for the Army's charities, are arbitrarily denied the equal protection of the laws under said Fourteenth Amendment.

20. Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that said last-named provision does not vest in the Board unbridled power to arbitrarily and with favoritism nullify the [fol. 269] efforts of solicitors and promoters for religious purposes and organizations and to thereby infringe the rights of religious freedom and the acquirement of property in violation of said Fourteenth Amendment, of promoters and other solicitors for such organizations and purposes, and especially, such rights of said Murdock and the Rescue Army and of its promoters and other solicitors.

21. Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that provisions in Section 44.19(3) (a), (b) and (c), and subsection 3, are not burdensome and do not constitute prior restraints, and are reasonable, valid and constitutional. Said provisions are: "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without a license from the Board so to do.

"(2) Application.

"To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application the applicant shall set forth, in addition to such information as may be required by the Board:

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member [fol. 270] of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation, that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter."

Subsection (3) requires the applicant to post a bond in the sum of $2,000.00, to insure payment of any "direct pecuniary loss sustained through any theft on the part of the principal."

22. In upholding Section 44.19, subsection (4), which requires the applicant for a promoter's license to pay a fee of $25.00 to said Board of Social Service Commissioners, and subsection (5) authorizes said Board to make such further investigation of the applicant and of "his affairs" as the "Board may deem advisable," and "if from such examination the Board shall be satisfied that the applicant is of good character and reputation," has "sufficient financial responsibility to carry out obligations incident to any solicitation such as applicant may [fol. 271] make," that his statements in his application "are true," etc., the application shall be granted. "Otherwise, the Board shall refuse to issue the license."

Said Supreme Court erred in holding and adjudging that the foregoing provisions are valid and constitutional and are not burdensome but are reasonable as applied to promoter-solicitors for charities and for religious organizations, donations to which are used in furtherance of their religious activities, and especially to said Rescue Army and its promoter-solicitor, appellant Murdock.

23. In holding that the provision of Section 44.19 (3) which empowers the Board to make such investigation of the applicant and "his affairs" "as they deem advisable" and from such examination to base their determination of his qualifications to be granted a license, is reasonable and not vague in its delegation of powers and standards for its use and said Court erred in failing and refusing to hold and adjudge that said provision is violative of due process under the Fourteenth Amendment to the Federal Constitution because it fixes no standard and authorizes said Board to make its decision upon matters wholly irrelevant to the purpose of the inquiry and to discriminate against some and favor others.

24. Subdivision 5 of Section 44.19 provides that the Board may examine the application and investigate the applicant for a promoter's license and his affairs as the Board deems advisable and shall issue a license "to solicit [fol. 272] as a promoter" contributions within said city if the Board is satisfied that the applicant is of good character and reputation and has sufficient financial responsibility to carry out the obligations incident to any solicitation to be made as such promoter, etc.

Said Supreme Court, in holding that said provisions can be made to apply to a solicitor of donations for a religious organization, which donations are to be used and are used in furtherance of the religious activities of said organization, including its charities, without being an infringement of the said Fourteenth Amendment and the right of freedom of religion and the inhibitions therein against prior restraints upon the exercise thereof, and in holding that said provision is not unreasonable and vague and a delegation of authority with no standard for its exercise and a violation of due process and the right of freedom of religion.

25. In holding that the provision in Section 44.01 of said ordinance which states: "No person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners of the City of Los Angeles shall be considered a promoter within the meaning of this article" is a reasonable classification and in holding that it is valid and constitutional, since said provision arbitrarily, capriciously and unreasonably exempts employees and officers of endorsed agencies from the necessity of securing permits and licenses to solicit, and from all of the burdensome and time-consuming requirements under which other solicitors [fol 273] and promoters are compelled by other provisions of said ordinance above pointed out to solicit, and said Supreme Court erred in holding that said exempting provision is not unreasonably discriminatory and does not deny the equal protection of the laws to charitable or religious organizations not endorsed by said Board and to their solicitors and promoters, in contravention of the Fourteenth Amendment to the Constitution of the United States.

26. Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the definition of the term "promoter" in Section 44.01 of said ordinance, and the provisions contained in Section 44.19 thereof pertaining to promoters, do not create and constitute an arbitrary and unreasonable classification of solicitors, and said Court erred in holding that the classification thus provided is reasonable and the standards provided are adequate, and further erred in failing and refusing to hold that, since no substantial difference exists between said definition of "promoters" and the definition of "solicitors" contained in Section 44.01 of said ordinance, and since the provisions of Section 44.19 concerning promoters require promoters to obtain a "license" and to pay a substantial fee therefor, and to provide a bond of $2,000.00, and to submit to unrestricted investigation by said Board, and the mandate of Section 44.19 by which promoters must file with said Board "such information as may be required," and to submit to denial of a license upon a mere exercise of the Board's whimsy, said definition and classification of promoters as distinguished [fol. 274] from other solicitors is arbitrary and unrea-

sonable and denies to promoters and their assistant solicitors the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution.

27. Said Supreme Court, in its opinion, decision and judgment in this case, erred in holding that Sections 44.03, 44.05, 44.06 and 44.12 of said ordinance, collectively and read together, are valid, constitutional and reasonable and are not burdensome as applied to secular or religious organizations and their solicitors and promoters who solicit donations of money and articles of personal property for charitable or religious or secular purposes.

Said Section 44.12 provides that the solicitor shall read his Information Card "to the person solicited" or "present to said person for his perusal," and allow him "sufficient opportunity to read the same before accepting any contribution."

Since, pursuant to Sections 44.03, 44.05 and 44.06 of said ordinance, the contents of said Information Card, (permit or license), may be of unlimited volume and must, to comply with said last-named sections, be so comprehensive as to render the requirements of Section 44.12 prohibitive of public solicitations of donations for money or personal property to be used in furtherance of religion, said Court erred in its opinion, decision and judgment in failing and refusing to hold that each of said provisions, especially all of them together, create a system of procedure which constitutes an unreasonable, burden [fol. 275] some and prohibitive prior restraint upon the exercise by the Rescue Army and its promoters and other solicitors in the rights of religious freedom and the free exercise thereof, and the right to dispense charity and to acquire, possess and dispose of property, as guaranteed by the Fourteenth Amendment to the Federal Constitution.

28. Said Supreme Court, in its opinion, decision and judgment erred in that, as to each of the foregoing Assignments of Error, said Court failed and refused to hold that the error assigned has violated the right of appellants, the Rescue Army and Charles F. Murdock, as guaranteed by the Fourteenth Amendment to the Constitution of the United States, to freedom of religion and to the free exercise thereof and the right to dispense charity and to receive donations for charitable purposes through

promoters and solicitors, whether such activities be in furtherance of religion alone, or for charity alone, or for both.

Designation of Parts of the Record Thought Unnecessary.

Appellant thinks that all parts of the record are necessary, and therefore designates as necessary for the consideration of the above points, all parts of said record.

Robert H. Wallis, Attorney for Appellants.

[fol. 275a] Service of a copy of the within Statement of Points and Designation Re Record is hereby acknowledged, this 17th day of October, 1946.

Ray L. Chesebro, City Attorney, John L. Bland, Deputy, Attorney for Appellee.

Service of a copy of the within Statement of Points and Designation Re Record is hereby acknowledged, this 18th day of October, 1946.

K. Z. Holaday, Secretary of Municipal Court.

[fol. 276] Supreme Court of the United States,
October Term, 1946

No. 574

Order Noting Probable Jurisdiction—October 28, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is assigned for argument immediately following No. 103, The Gospel Army vs. City of Los Angeles et al.

Endorsed on Cover: File No. 51,438 California, Supreme Court, Term No. 574, The Rescue Army, a Corporation, and Charles T. Murdock, Appellants, vs. The Municipal Court of the City of Los Angeles. Filed October 5, 1946. Term No. 574 O.T. 1946.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 574

THE RESCUE ARMY, A CORPORATION, CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

STATEMENT AS TO JURISDICTION

ROBERT H. WALLIS,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 574

THE RESCUE ARMY, A CORPORATION, AND CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES,

Appellee

JURISDICTIONAL STATEMENT

Jurisdiction of the United States Supreme Court to entertain appeal in this case is sustained by the Fourteenth Amendment to the Constitution of the United States, and Section 237(a) of the Judicial Code, 28 U. S. C. A. Section 344(a) and (b), 8 F. C. A., Title 28, Sec. 344(a).

The State statute involved in this case is Ordinance No. 77,000 of the incorporated City of Los Angeles, California, which ordinance is entitled "Charities." It contains nineteen sections, some of which have many subdivisions; the nineteenth, entitled "Pawnbrokers, Secondhand Dealers" is not involved in this case.

Through the provisions of the first eighteen sections, being numbered 24.01 to 24.18, inclusive, it purports to

regulate all public solicitations of donations for charitable purposes and makes it unlawful to solicit without strict compliance with said provisions, violation of which prohibition is made punishable as a penal offense.

The Rescue Army is an incorporated, non-profit religious organization and has solicitors who secure donations of money and goods to be used exclusively in its religious activities which consist of preaching the Gospel in its churches, ministering to the sick and needy for the promotion of the Christian faith, maintaining missions and tent meetings and the distribution of religious tracts and other similar literature, and to these ends, engaging and supporting ministers and evangelists.

The appellant, Murdock, at all times involved, has been a duly ordained officer of the Rescue Army who is required by it to devote his entire time and efforts to its said religious activities, and to solicit donations personally and through others, are among his duties.

Appellants are charged with violations of Section 44.09 and 44.12. Section 44.09 reads:

> "(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by the express written permission of the Board.
>
> "(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a "notice of intention" as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article."

Section 44.12 provides:

> "No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person solicited or presents it to said person for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited."

Said sections above quoted are not severable from other sections, or from the whole body of said ordinance, but are interdependent therewith and derive their claim to legality solely upon the fact that they are parts of the general plan of a purported regulatory law enacted in the exercise of the police power.

Issuance to a solicitor of the "Information Card" mentioned in Section 44.12 is made essential by Section 44.03, but in order to secure an Information Card a would-be solicitor must first file a "notice of intention to solicit" as provided in Section 44.05.

Whether Section 44.12 is void as a prior restraint on the exercise of freedom of religion, as applied herein, directly involves Sections 44.03 and 44.05, and it is necessary to set them forth to reveal their full import.

Section 44.05 reads:

> "No person shall solicit, nor shall any officer or member of any association authorize any person to solicit, any contribution for any charitable purpose unless within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:
>
> "(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true and correct copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

Section 44.03 provides:

"The department shall have the following powers:

"(a) To investigate the allegations of Notice of Intention, or any statement or reports;

"(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made;

"(c) To investigate at any time the methods of making or conducting any such solicitation;

"(d) To issue to all solicitors Information Cards which cards shall show:

"(1) That same is issued as information for the public and is not an endorsement;

"(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;

"(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;

"(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made;

"(e) To charge a fee for supplying Information Cards, at the rate of four cents per card; provided that when more than twenty-five cards are issued at one time for the same solicitation, the fee for all such cards in excess of twenty-five shall be one cent per card."

Section 44.06 contains an additional requirement concerning the subject matter of both Sections 44.03 and 44.05, as follows:

"There shall be filed with the Department with such Notice of Intention a statement of any agreement made with any agent, solicitor, promoter, manager or conductor of such solicitation, together with a copy of each agreement which may be in writing. Within twenty-four hours after any change in any such agreement or the making of any new or further agreement, a true copy of such change or agreement if in writing, or if not, written details thereof shall be filed with the

Department. Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however, that the Board, for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or for any association, by at least two officers of such association and shall be open to the inspection of the public."

Section 44.16 provides that if the solicitation is "solely" for evangelical, missionary or religious purposes the provisions of the Ordinance (except Sections 44.01 and 44.04) shall not apply, "however, that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case."

Section 44.15 in part reads:

"No person shall solicit any contribution for any charitable purpose unless such person shall tender to

each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:

"(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

"(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

"(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

Other provisions in especially close relation to Section 44.09 are:

1. Section 44.01 creates a special class of solicitors called "promoters", distinguished from other solicitors, only, in that they receive "consideration", for soliciting.

2. The promoter-solicitor must first apply for a "license" (Sec. 44.19 (1)). He must make application in writing giving any information "required by the Board" and on three specified items pertaining to the plan and purpose of the solicitation and the association conducting it. (44.19(2));

Applicant must post a bond in the sum of $2,000 to insure against theft, etc. (44.19(3)); He must pay a "fee" of $25.00 to the Board (44.19(4)); He is then examined and awaits the result of an investigation by the Board as to his affairs and his "character and reputation." If the Board is satisfied of applicant's "financial responsibility" and other specified matters it shall issue the license; "otherwise, the Board shall deny the application." (44.19(5)).

3. "No person who is a paid officer or a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this Article (Sec. 44.01)."

The judgment and decree sought to be reviewed by application for allowance of appeal was rendered on the 26th day of June, 1946, and became final on July 24th 1946, a petition for rehearing having been duly filed by plaintiffs and petitioners, which petition was by said State Supreme Court, on July 24th, 1946, denied.

Statement of Grounds upon Which It Is Contended the Questions Involved Are Substantial

The case involves the validity of said entire "Charities" Ordinance, and especially of Sections 44.09 and 44.12 thereof, it having been claimed by petitioners, the Rescue Army and Charles T. Murdock, that said sections, standing alone, and together with all others in said Ordinance on their face infringe petitioners' right of religious liberty and the free exercise thereof, and their right to dispense charity in the exercise as incidental thereto, and are thus violative of the First and Fourteenth Amendments to the Constitution of the United States; in that certain provisions of said Ordinance and the entire plan thereof as applied to religious organizations or to charitable associations, and especially as applied to petitioners and their activities, constitute prohibited prior restraints upon the exercise of said right, and that certain provisions of the Ordinance as applied to petitioners and to all religious organizations similarly situated are arbitrary, unreasonable and unduly burdensome, and that certain of them are discriminatory and deny the equal protection of said enactments, empowering respondents to grant special immunities and privileges to some and to deny the same to others, and are thus

especially prejudicial to petitioners if enforced discriminatorily and arbitrarily against them as said City and its Board and officers have done and seek and threaten to continue to do.

Among the provisions of said Ordinance which are and have been challenged by petitioners as invalid and infringements of all clauses and guaranties of the 14th Amendment to the Federal Constitution is Section 44.09 which empowers the "Board to grant or deny permission to solicit in public places anywhere in Los Angeles for any purpose, including for religion and charity, and provides that "no person shall solicit any contribution except with the written permission of the Board," but provides *no* standard or rule to guide or govern the Board's action. In requiring a religious organization to secure permission to solicit for religious activities it violates the right of freedom of religion; in empowering said Board to discriminate, it violates the equal protection of the laws clause, and since the Board is authorized to deny permission capriciously, unreasonably or for evil purposes it is obnoxious to the due process clause of said 14th amendment.

Throughout the progress of this proceeding petitioners have claimed and now assert that, among others, the following are void for the same reasons as are above specified as to Section 44.09:

Section 44.01, in its provision that no person who is a paid officer of a social service agency "endorsed" by said Board "shall be considered a promoter," when conjoined with the authorization in Section 44.03 of the Board to "endorse" any charitable association, and no rule or standard is provided to govern the Board in making its decision; the Board being given arbitrary power to act may relieve those endorsed from subjection to numerous time-consuming, burdensome, unreasonable requirements, such as

paying a license fee and posting a bond, while the unendorsed remain under compulsion to comply with them.

Also, among the Sections fatally inflicted with said unconstitutional violations is Section 44.12 which may be made inapplicable to a given solicitor by Board endorsement and so infringes the equal protection of the laws and the due process clauses of said 14th amendment, and in requiring the solicitor to have and read the voluminous and unreasonable Information Card to every person solicited, petitioners have claimed and do claim that it violates the right of freedom of religion.

Petitioners claim and have claimed that the provisions which render applicable to religious organizations requirements compelling their solicitors and colporteurs to secure a permit or license, to pay a fee, and post a bond, to provide unlimited information upon unspecified subjects, to await without time or subject matter limit, upon investigations by said Board, and numerous other similar demands before being allowed to solicit, if any part, however small, of the anticipated donations, are not "purely" and "solely" for religion are arbitrary, unreasonable, discriminatory against religious organizations and solicitors and each constitutes a violation of the exercise of the right of freedom of religion. The most offensive of such sections creating said violations are: 44.05, 44.06 and 44.18.

Also, petitioners assert that the sections and provisions of the Ordinance involved, including 44.09 and 44.12 are so related and interdependent that they form a void and unconstitutional plan whose validity must be considered and determined in order that complete or substantial relief be rendered.

The State Court of Last Resort, the Supreme Court of the State of California, affirmed the judgment and decree of the trial court, after denial without opinion of plaintiff's

petition by the District Court of Appeal of said State and said Supreme Court held and adjudged that said Sections 44.09 and 44.12 of the Ordinance 77,000 of said City of Los Angeles, and certain other closely related sections of said ordinances are each constitutional and valid and are not violative of the 14th amendment to the Federal Constitution upon any of the grounds asserted by petitioners; and in upholding the validity of Section 44.12, which expressly requires every solicitor to "in all respects comply with the provisions of this Article" said decision and judgment upheld the constitutionality of said Ordinance (Article 4, Section 4 of the Ordinance involved) as a legal entity and each provision thereof as against all challenges on constitutional grounds presented by petitioners.

Some of the cases which, it is believed, sustain jurisdiction and bring the instant case within the applicable jurisdictional and statutory provisions are:

Cantwell v. *Connecticut*, 310 U. S. 296, 84 L. Ed. 1213;
Murdock v. *Pennsylvania*, 319 U. S. 105, 87 L. Ed. 1292;
Zucht v. *King*, 260 U. S. 174, 176, 67 L. Ed. 194.

Nature of the Case and Rulings of the Court Which Are Believed Bring the Case Within Jurisdictional Provisions to Sustain Jurisdiction.

The action involved was commenced by the Rescue Army and Charles T. Murdock by a Petition for a Writ of Prohibition to restrain the Municipal Court of the City of Los Angeles from proceeding to try petitioner Murdock for alleged violations of Sections 44.09 and 44.12 of Ordinance Number 77,000 of said City. The respondent court was about to try said cause for the third time, a conviction having been had in each of two previous trials, which in each instance, had been reversed on appeal, by the Superior Court of California in and for the County of Los Angeles.

The complaint or petition for said Writ relates the previous trials, convictions and reversals and avers that the Rescue Army is a non-profit incorporated religious organization, of which Murdock is an officer whose official duties occupy his full time, and that one of said duties is soliciting funds from the public to be used in its religious activities, including its charities (Petition for Writ, Pages 1 and 2); it is further averred that said Ordinance and Sections 44.09 and 44.12 and other sections thereof are, separately and as a whole, violative of the right of religious freedom of petitioners and of all religious organizations similarly situated, both on their face, and as construed and applied by said city and by its Department of Social Service, and the Commissioners and Secretary thereof in that said Ordinance and sections create and constitute numerous prior restraints upon the exercise of said right, as guaranteed by the 14th and the 1st Amendments to the Federal Constitution (Petition, Pages 4 to 7).

Said petition alleged that "said Sections 44.09 and 44.12 are not, and neither of them is, severable from other sections of said Ordinance, or from the whole body thereof, but are dependent upon and interdependent with other sections of said Ordinance, and derive their pretended legality solely from the fact that they are a part of a purported regulatory law enacted in the exercise of governmental power" (Petition, Page 8), and said petition contains the following averments:

> "That at all times herein mentioned there was and now is in effect in the City of Los Angeles an ordinance, entitled the 'Charities and Relief' Ordinance, numbered 77,000, a copy of which said ordinance is attached hereto and marked Exhibit A, and made a part of this petition by reference, which said Ordinance purports to and by its provisions does prohibit the exercise of the right of religious freedom by church and other religious organizations through the solicita-

tion of money, or anything of value, or by the sale thereof, for religious purposes except upon the payment of a license tax or fee to said city, and the issuance of a license or permit by said city to so solicit; that said ordinance forbids and penalizes said solicitations by a class of solicitors which it designates as 'Promoters' unless and until said 'Promoters' shall have paid to said city a license tax or fee of $25.00 and have posted a bond in the sum of $2,000.00, and said ordinance likewise requires of another class of solicitors a payment of a license tax or fee and the posting of a bond in the sum of $500.00 with the Board of Social Service Commissioners of said City, and said ordinance further forbids any 'promoter' or other 'solicitor' to solicit without having first obtained a permit or license so to do from said city, * * *." (Petition, Page 4.)

"That section 44.16 of said Ordinance purports to exempt from the requirements of the payment of said license taxes or fees and the posting of said bonds and the obtaining of said licenses or permits those solicitors whose solicitations are 'purely' for 'evangelical, missionary or religious purposes'; but petitioners aver that said city and its boards, officers and other agents have at all times herein mentioned construed and applied, and now construe and apply said last named provision to exclude from said exemption all solicitors who do not entirely donate their services and if any portion, however small, of the collections made by said solicitors are ~~to be or are~~ used for charity even though such charity is an essential activity and an integral part of a missionary, evangelical or religious activity of a church or other religious organization, petitioners aver that each, every and all of the provisions described in this paragraph and in paragraph V of this petition is and they all constitute a prior restraint upon the exercise of the right of religion and as such violate Amendments One and Fourteen of the Constitution of the United States."

"That said Ordinance as construed and applied by said city, its officers, boards and other agents, classifies all religious activities of churches, religious associations and other religious organizations as charities and as being for charitable purposes, and thereby subjects said religious organizations to all of the said licensing and permit requirements of said ordinance; that said ordinance provides that said city, through its Department of Social Service may 'approve' such 'charitable associations' as it deems are entitled to such approval and thereby exempt them and their promoters and solicitors from the provisions of said ordinance hereinbefore described and from the necessities of time-consuming delays in investigations and other procedural requirements of said ordinance, and said ordinance, section 44.09 thereof, provides that said Board of Social Service Commissioners may by 'express written permission' allow any person to solicit contributions by means of a box or receptacle, upon any street, sidewalk or way, or in any public park, or in any publicly owned or controlled place, although without such 'express written permission,' all persons are forbidden by said section to so solicit as aforesaid;

"Petitioners aver that said last described provision of said section 44.09 and of said provision authorizing said Department of Social Service to approve such charitable association as it deems entitled thereto, arbitrarily grants and permits to be granted privileges and immunities to a portion of a class while denying the same to others and that said provisions authorize the granting of special privileges to certain persons which are not given to others similarly situated, and are thus violative of Article I, section 21 of the Constitution of California and of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution." (Petition for Writ, Pages 5 to 7.)

Defendant and Respondent's Demurrer and Answer

The defendant court, represented by the City Attorney of said city, filed an answer and also demurred to the complaint generally and upon numerous specific grounds and filed "Points and Authorities" containing such argument as to be a brief, in support of the demurrer, in which it is contended among other matters, that the ordinance "constitutes a valid exercise of the police power." "A means of registration of persons engaged in soliciting donations • • •"; that it "does not confer power, arbitrary or otherwise, upon the Board to deny to anyone the right to solicit for charitable purposes;" that "Insofar as it confers power on the Board to waive compliance with certain regulations, such action must be taken in the exercise of a wise discretion;" that "if the exception found in Section 44.16 of the Los Angeles Municipal Code be considered as establishing a religious test and for that reason invalid, such fact does not invalidate the remainder of the ordinance" and "the Ordinance as thus construed would still come within the limits of control of religious organizations as outlined in the various decisions of the United States Supreme Court." (Points and Authorities, Br. With Dem., Pages 19, 20.)

Said argument on behalf of the Municipal Court declares that Sections 44.01 to 44.15 are "regulatory in their nature"; that although nothing in the Ordinance authorizes "the Board to issue or deny a permit to solicit", a refusal "to issue such cards (permits) would be overcome by a Writ of Mandate," and it is asserted that the provisions of Section XVIII pertaining to "promoters" (one class of solicitors) are not shown by the petition to be applicable to either of the plaintiffs, but that such provisions do not "infringe upon religious liberty." (Ibid. Pages 14, 15.)

The answer admits the allegations of the petition con-

cerning the prior trials of the criminal case involved and that the said City and its City Attorney and the Municipal Court will proceed to try the case again unless restrained by the process sought; that the City of Los Angeles and its City Attorney claim the right to compel plaintiffs to obey all of the provisions of the Ordinance involved and have threatened to arrest Murdock and all other solicitors of the Rescue Army who solicit contributions of any kind for it, or who otherwise violate provisions of said Ordinance. The answer does not deny the allegations of the petition regarding the nature and official purposes of the Rescue Army or Murdock's relationship to it and his duties as an officer and employee thereof, including the duty to personally solicit donations and to do so through others.

The answer denies that the Ordinance prohibits the exercise of the right of freedom of religion by religious organizations, except upon payment of a license tax or fee and the issuance of a license or permit by said city; denies that said ordinance requires that the class of solicitors called "promoters" are required to pay a license fee of $25.00 and post a bond of $2,000.00 and to secure a license to be permitted to solicit in the City of Los Angeles; denies that as construed and applied by said City and its Boards and officers, Section 44.16 of the Ordinance and any of the Sections which require of solicitors or promoters a fee or a license tax or furnishing a bond and securing a permit or a license to solicit for religous organizations, constitute prior restraints upon the exercise of the right of religious freedom or violate Amendments One or Fourteen of the Constitution of the United States, and, generally, said Answer denies each and all of the averments of the complaint by which a particular section, or the Ordinance as a whole, are challenged by the petition as violations of the said 14th Amendment or any of its clauses; the answer also

alleges that Sections 44.02 to 44.15 of the Ordinance involved "do not apply to persons who solicit donations which are to be used solely for religious, missionary or evangelical purposes." (Answer, Pages 3 and 4.)

Petitioner's Reply to Respondent's "Brief" and Answer

While this proceeding was pending before the State Supreme Court, the Petitioners, Murdock and the Rescue Army, filed a "Reply to Respondent's Answer and Brief" in which it is pointed out that Respondent's Points and Authorities (brief), accompanying its demurrer, in contending that petitioners would be acquitted at a trial if Murdock was soliciting *solely* for religious, evangelical or missionary purposes and, hence, the writ should not issue, overlooked the proposition that the ordinance gives the city's department authority to decide whether or not any activity is purely religious and that it was held in *In re Darte,* 172 Cal. 47, that an activity conducted by the Salvation Army where the proceeds from the sale of donated articles were used for both purely religious purposes and for its charities is within the protection of the 14th Amendment and that the City of Los Angeles had no power to require that the purpose be solely for religion or to require a permit to entitle a solicitor for such organization to solicit. (Petitioners' Reply to Respondent's Answer and Brief, Pages 1a to 3.)

Also, it was asserted that a statement in said Points and Authorities that all that the Ordinance requires of a would-be solicitor to entitle him to solicit is that he file a "statement setting forth certain information," is positively not true, because before soliciting an "Information Card" (permit) must be issued and to secure such permit involves compliance with numerous other sections, and the Ordinance in effect allows the City's Department of Social Service

and its Secretary to arbitrarily refuse to issue the same; also, in response to respondent's claims in said brief that the license fees required by the Ordinance are merely for purposes of caring for identification and registration expense and that the Ordinance is a mere registration and identification act as held lawful in *Murdock* v. *Pennsylvania*, 87 L. Ed. 1292, and *Cantwell* v. *Connecticut*, 310 U. S. 296, 84 L. Ed. 1213, petitioners quote from these decisions, and thereby purport to show that such claims are unfounded and that the City Ordinance involved and its licensing and other requirements, under said last named cases, violate the right of freedom of religion and its exercise, by creating many unreasonable and burdensome prior restraints. (Ibid. Pages 2-5.)

To show the nature of Petitioner's reply and the issues argued, in this behalf, a portion thereof is quoted as follows:

> "In the Cantwell *v.* Connecticut decision, 'slight inconvenience' only is permitted. In Murdock *v.* Pennsylvania, it is made plain that the inconvenience and delay must be so limited as not to constitute a restraint upon an itinerant preacher.
>
> "Of course any enforced delay or any burden is a previous restraint upon the exercise of the Constitution-created right to engage in charitable or religious activities.
>
> "If we picture an itinerant preacher under compulsion to comply with Ordinance 77,000 it is obvious that he would become a permanent citizen and a qualified voter before the restraints *in advance* would be removed, but few itinerant preachers or solicitors could pay a $25 license fee and pay for a $2000 bond for a few days solicitation to support his preaching activities in city after city throughout the country. The proposition is preposterous to describe this license or permit fee as 'nominal' and 'regulatory.' The Murdock opinion forbids. Anent the itinerant preacher, it says:

"'Itinerant evangelists moving throughout a state or from state to state would feel immediately the cumulative effect of such ordinances as they become fashionable.'

"Upon what reasonable pretext could a *registration* system consume from ten days to an unlimited period for *investigation* and securing additional information?

"A registration system is what its name implies, and it is so treated in both the Cantwell and Murdock decisions. Its object is to place in the hands of authorities the 'names, addresses and other marks of identification' of the solicitor which could ordinarily be supplied in five minutes. The Cantwell opinion adds to these items, the authority of the solicitor to represent the cause for which he intends to solicit. A letter or other evidence of such authority, if an association is represented, would be handed to the Board's secretary when the identification data is supplied or immediately thereafter.

"No, a 'registration system' has nothing in common as to its procedure, substance or object with the flat license tax of $25 imposed in 'Our Charities and Relief Ordinance.'" (Ibid. Pages 10, 11.)

Answering assertions that the Ordinance does not confer power, "arbitrary or otherwise, upon the Board to deny anyone the right to solicit for charitable purposes" and that Sections 44.09, 44.15 and 44.16 especially do not confer such power or violate the equal protection of the law clause of said 14th Amendment, petitioners insisted that said sections must be construed as the petition alleges and in that behalf points out other interrelated sections of said ordinance which, it is argued, infringe the equal protection of the laws clause of said 14th Amendment, to-wit, Section 44.03, subdivision 2, which authorizes the Board to arbitrarily endorse certain associations, denominated "any social service agency" and to render it scot-free of the prior restraints imposed upon all others similarly situated,

among the restraints named being compulsion of applying for a permit or license, submitting to unlimited investigations and exhibiting or reading voluminous information cards to those solicited; also the definition of the term "promoter" in Section 44.01 is claimed to create an arbitrary, oppressive and unreasonable class discrimination in that it makes all solicitors subject to classification as promoters by the Board and at the same time empowers the Board to relieve, without restrictive standards, the promoter of an "endorsed" social service agency, of all provisions applicable to other promoters, among which are paying a license fee of $25.00 to solicit and posting of a bond of $2,000. (*Ibid.* Pages 7-9).

Petitioners also point out that under said Ordinance, Charles T. Murdock is a promoter as well as a solicitor and is subject to said discriminatory provisions of Section 44.01, and finally said Reply to respondent's answer and brief contends that said city has no power to make any solicitation for a religious purpose or for charity as does Section 44.16 by limiting to "purely evangelical, missionary and religious purposes," solicitations which are exempt from the provisions of the ordinance. (*Ibid.* Pages 4-7).

Petition for Hearing by the Supreme Court

After the denial by the State District Court of Appeal of the petition, petitioners duly petitioned the Supreme Court to hear their petition, which petition and the alternative Writ were granted as prayed.

In said Petition for Hearing, it was represented that the matters involved concern a large number of people who compose the Rescue Army or give it aid and support and all other organizations of similar character, their members and adherents, and a copy of the petition of the Writ of Prohibition was set forth in full, and a copy

of the Ordinance involved was appended as "Exhibit A."

Points and Authorities accompanied the Petition for Hearing. Those which support petitioner's challenge to the City Ordinance involved and its provision are the following:

"Constitutional Rights Relied Upon

"A State Cannot Impose a Charge for the Exercise of the Right of Religion Which Privilege and Right is Granted by the Federal Constitution.

Murdock *v.* Penn., 87 L. Ed. 1292;
Cantwell *v.* Connecticut, 310 U. S. 296;
In re Darte, 172 Cal. 47.

"The Right to Engage in Religious or Charitable Activities is not the Subject of State Regulation, although a Mere Registration-Identification Ordinance May be Valid Where Only a Nominal Fee is Charged.

Murdock *v.* Pennsylvania, supra;
Cantwell *v.* Connecticut, supra.

"*The Fact That a Solicitor Receives Some Profit From His Work Cannot Transform Evangelism Into a Commercial Enterprise.*

Murdock *v.* Pennsylvania, supra;
In re Darte, supra.

"To Impose Prior Restraints on The Colporteurs or Solicitors for Religious Groups is to Take From Them a Vital Support and an Ordinance Which Does so is Void.

Murdock *v.* Pennsylvania, supra.

"An Ordinance Which Empowers a Board or Officer to Decide Whether Activities of a Religious Group are or are not Religious or Which Requires That All Contributions Secured by Solicitors Shall be Devoted to Purely Religious Purpose Contravenes the Federal Constitution.

Murdock *v.* Pennsylvania, supra.

"The Constitutionality of an Ordinance Purporting to Exercise the Police Power may be Tested by its Operation and Effect as Construed and Applied by Officers Authorized to Enforce it.

Murdock *v.* Pennsylvania, supra;
Cantwell *v.* Connecticut, supra;
Near *v.* Minn. ex rel. Olsen, 283 U. S. 697;
In re Darte, supra."

(Points and Authorities, Petition for Hearing, Pages 3-5.)

Defendant and Respondent's Answer to Petition for Hearing

The respondent court represented by the Los Angeles City Attorney filed an Answer opposing the granting of the petition for Hearing by the State Supreme Court. The Answer states that "The legislative provisions comprise Sections 44.01 to 44.19, inclusive, of the Los Angeles Municipal Code (Ordinance No. 77,000 as amended); that Sections 44.05, 44.12 and 44.16 are "primarily involved," and that "Full explanation of such sections may require reference to other sections, and the Answer states:

"Section 44.05 provides that all persons desiring to solicit for charitable purposes shall file, as a condition precedent to engaging in such activity, a statement setting forth certain information. Having filed the required statement one may proceed with such solicitation without further ado, provided only that he comply with the provisions of Section 44.12, which section requires that he carry and exhibit an information card provided for by Section 44.03, for which card a charge is made. The important point is that there is no provision in the ordinance authorizing the Board of Social Service Commissioners to refuse to issue such cards or to prevent such solicitation.

"Section 44.10 provides that one who solicits for or on behalf of a charitable organization, using its name, must have written permission so to do.

"Section 44.06 provides that a charitable organization which elects to conduct solicitation by agents, etc., must file copies of its contracts with such agents.

"Section 44.19 governs the matter of solicitation by 'promoters.' It does not appea by the petition that the corporation petitioner has utilized the services of a promoter, nor does it appear that Murdock is acting as a promoter. Therefore, consideration of the provisions of Section 44.19 is immaterial to this case.

"Especial attention is directed to that portion of Section 44.16 which provides that no portion of the article in which the various sections above named appear, except Section 44.01 (definitions) and Section 44.04 (fraudulent solicitations), applies to 'solicitations made solely for evangelical, missionary, or religious purposes.'"

It is said that the Ordinance does not involve the Federal Constitution and in that behalf the answer argues:

"As pointed out, the only requirement is that soliciting agencies file a statement, secure information cards and exhibit such cards to the members of the public upon whose benevolence they depend for contributions.

"It is a well known fact that John Public is the sucker who foots the bills and is victimized by various unworthy schemes promoted in the name of charity. We see no undue hardship upon any organization, religious or otherwise, in a requirement which, as a condition precedent to solicitation of funds from the public, requires the filing of a statement setting forth the purposes for which gifts are to be used. Certainly the person who is asked in the name of charity to part with that which he has earned by the sweat of his brow is entitled to be advised concerning the nature of the organization which expects to distribute the largess he is asked to bestow." (Ibid. Pages 6, 7.)

It is asserted in all reported cases that:

> "We find no reported cases which support such theory of law. To the contrary, we find that all such cases recognize the right to exercise reasonable control over the activities of religious orders so long as no effort is made to either control their beliefs or restrict their public advocacy of their beliefs." (Ibid. Page 7.)

Excerpts from *Cantwell* v. *Connecticut*, 310 U. S. 296, 84 L. Ed. 1213, are quoted, the gist of which are: "The Amendment (14th) embraces two concepts—freedom to believe and freedom to act. The first is absolute, but in the nature of things, the second cannot be. • • •"

> "It is equally clear that a state may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment." (Ibid. Page 8-D.)

> "Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The State is likewise free to regulate the time and manner of solicitations generally, in the interest of public safety, peace, comfort or convenience." (Ibid. Page 8.)

Murdock v. *Pennsylvania*, 87 L. Ed. 1292 (Adv. Op.), is quoted as follows:

> "As we have said, it (the ordinance involved) was not merely a registration ordinance calling for identification of the solicitors so as to give the authorities some basis for investigating strangers coming into the community." (Ibid. Page 9-F.)

In respect to *In re Darte* (172 Cal. 47) decision, the answer states:

> "The latter part of the majority opinion in the Dart case contains a wonderful panegyric upon the benefits of charity but is as devoid of law as is Pilgrim's Progress.
>
> "Our ordinance does not give anyone the right to prohibit solicitation for charity as did the ordinance involved in the Cantwell case. It provides solely a means of registration of persons intending to solicit for donations, and a requirement that solicitors identify themselves and, by means of an information card, inform prospective donors of certain facts reasonably calculated to enable such donors to determine whether they wish to give to such particular charity." (Ibid., Page 10-G.) Concerning Section 44.16, respondents say:
>
> "'The provisions of Section 44.16, if in fact constituting a religious test, establish such test as the measure of being relieved from doing reasonable acts required of all persons other than those who wish to take advantage of the exception. . . .'
>
> "The provision found in Section 44.16 is for petitioners' benefit for the reason that it gives to them, and others similarly situated, privileges not enjoyed by all, because they are placed within a separate class. It appears to us to be well settled that one may not complain of a provision in an ordinance which operates to his benefit. (Ibid. Pages 10, 11-H.)

Brief by Amici Curiae

A brief "Amici Curiae" was also filed, with permission of said Supreme Court, in support of said Respondent Court's decision. The attorneys filing this brief purport to represent numerous "charitable organizations" of Los Angeles County which are said to be members of "Community Welfare Federation," also known as "Community Chest." (Am. Cur. Br. Pages 1, 2).

After declaring the position of said organization as favorable to religious freedom and as upholding said ordinance as constitutional, the Amici Curiae quote said City Attorney's brief, Points II to IV, inclusive, filed in the case of *Gospel Army* v. *City of Los Angeles, et al.*, consisting of 13 pages, the last 4 pages of which concerns junk dealers, and is not involved herein. (Am. Cur. Brief, Pages 3-16).

Said brief states that the writers have not had time to give research which they desired to the matter, but are astounded that anyone would "contest the Ordinance," and predict that if held invalid "it would throw open the City of Los Angeles to an influx of organizations grossly defrauding our charitably minded citizens," and it is asserted that, "if any activity of any person is truly religious in character, it is specifically exempted by the Ordinance. (Sec. 44.16). (Am. Cur. Brief, Page 18).

Petitioner's Reply to Amici Curiae Brief and Respondent's Answer Opposing Petition for Hearing

Thereafter Petitioners filed a brief entitled "Reply to Respondent's Answer and to Amici Curiae Brief."

In this reply, attention is called to the fact that Amici Curiae's brief implies that the Gospel Army and the Rescue Army dupe and defraud the public and that if this is true "provisions of the State Penal Code afford ample remedies," and would afford ample protection against any predicted influx of fraudulent organizations to follow in the event said ordinance be held invalid; it is pointed out that said Amici Curiae adds nothing to the discussion of the issues involved and serves no purpose except to add the weight of well known, influential organizations, in support of respondent's cause; that the Gospel Army and Rescue Army causes had been consolidated for purposes of argu-

ment in said Supreme Court, and the mere quotation from the City's brief in the first named case could be no aid to the Court: that the representation that the writers represent "many more charitable organizations" in addition to those enumerated, is hearsay, and that those enumerated are of "such standing to have received the approval of the Municipal Charities Commission" and to have been "placed on the favored list of those exempt from the principal oppressive and unconstitutional provisions of the Ordinance," as shown by the public record of the City of Los Angeles; that the condition thus presented is reminiscent of that shown to have prevailed when the opinion in *In re Darte*, 172 Cal. 72 was written when numerous "recognized Churches" and other "endorsed" organizations were exempted from provisions similar to those in the instant ordinance under a section which, the opinion states, "permits such charitable work to be carried on only by 'trustee satisfactory to the Municipal Charities Commission'"; that said provision and the entire ordinance was held discriminatory and void. (Petitioners Reply to Respondent's Answer and Amici Curiae Brief, Pages 1-3).

Petitioners' last named brief points out the Ordinance Sections from compliance with which the "endorsed" list are relieved by the Board's endorsement under Section 44.01, among which the following are listed:

> "1. Having been "approved" and "endorsed" they are thus exempted from the necessity of waiting during an indefinite and unlimited time for the board "to investigate the allegations of notice of intention, or any statement or reports." (Ord. Sec. 44.02, (a), which they might be required to file." (Ord. Sec. 44.02, (a).
>
> "2. They are relieved from the prior restraint incidental to exposing all of their "books, records and papers" to the board or its employees and waiting for

whatever period said authorities see fit to consume in "inspection" and "making copies" thereof. (Ord. Sec. 44.03, (b).

"3. They are exempted from the handicap of interruptions through further investigations of any and all types and manners which the ordinance gives the City authorities which they may choose to make, without limitation or restraint, after solicitations have begun, (Ord. 44.02(3), and, hence, are given carte blanche to use any methods amici curiae see fit to employ, subject only to the risk of criminal prosecution by the state.

"4. They are entirely relieved of the necessity of securing for their solicitors or promoters information cards (Ord. Sec. 44.02, (d), (licenses; so designated in Secs. 44.05, 44.06, 44.08, 44.10, 44.11, 44.12, also since every promoter is a solicitor under Sec. 44.01, Sec. 44.19), and the delays entailed in that laborious time-consuming, oppressive procedure. (Ord. Sec. 44.02, (d, 1). (Ibid. Page 6.)

Petitioners replied at length to that portion of the Gospel Army brief which is quoted by *Amici Curiae* and in that behalf shows that the City Attorney of said City claims "the right (under Section 44.16) of the Board to classify any case as for charity alone if all contributions are not used 'solely for religious purposes'" and argues that this claim concedes that the Board applies a religious test in determining whether the cause is "solely for religious purposes." (Ibid. pages 5-10.)

Murdock v. Pennsylvania, 319 U. S. 105, 87 L. Ed. 1292, and *Cantwell v. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213 are relied upon as condemning the claim of the Board that solicitation is not solely for religion if any part of collections made are used to pay a solicitor or colporteur, and the Cantwell opinion is quoted in its holding that the fact that an administrative officer may be compelled to issue a certificate to entitle one who would solicit for a religious

cause to do so, does not suffice as a remedy where a law empowers such officer to decide whether the purpose is religious and to refuse the certificate if he decides negatively; also that the right to solicit for religion or charity incident to such causes may not be restrained to prevent fraud, because, it is said, "certainly, penal laws are available to punish such conduct."

It is contended that the instant ordinance is more clearly violative of due process and religious freedom than the one involved in the *Cantwell* case because in the latter the ordinance permitted exemption if the purpose was "a religious one or a bona fide object of charity", whereas the instant law requires that the cause be "purely" religious with no adulteration, however slightly, by charity (Ibid. Pages 15, 16).

In re Darte, 172 Cal., is quoted as refuting the City's claim in its Gospel Army brief (quoted by *Amici Curiae*) that the "purely religious" provision is constitutional because the Darte opinion held that a law which sets up an absolute standard of perfection is "arbitrary, unreasonable, and oppressive" and void; that a religious cause cannot be made something else by legislation, and that an Ordinance which was in force in Los Angeles in 1916 which differentiated religion and charity as applied to "religio-charitable" organizations violated due process, and the free exercise of the rights of religion and to be charitable, although the money solicited by the Salvation Army was to be used to maintain hospitals, lodging houses, charities, and a second-hand store, as well as for purely religious purposes (Ibid. Pages 11, 12).

The Opinions of the State Supreme Court. 28 A. C. 475

The majority and dissenting opinions are set forth in the appendix to this statement. The majority decision and

opinion of the Supreme Court sustains the constitutionality of the Sections and provisions of the Ordinance involved, either expressly or by necessary implication, against all attacks by the petitioners, the Rescue Army and Charles T. Murdock. It expressly declines to decide whether the ordinance is being unconstitutionally applied to Petitioners because, the opinion states, "The allegations relied upon in support of this contention, however, are denied by the Answer" (28 A. C. 488).

Said decision sets forth in Footnotes the Ordinance Sections, 44.09 and 44.12, which Petitioner Murdock was charged to have violated and also certain other interrelated sections, to-wit: 44.03 and 44.05; without naming certain grounds upon which petitioners had challenged the constitutionality of said sections (except 44.09) said opinion determined such challenges adversely to petitioners' contentions by referring to the Supreme Court's decision in "the Gospel Army case, ante, page —" (28 A. C. Pages 485, 488).

Reference to the opinion in *Gospel Army* v. *City of Los Angeles*, 27 A. C. 246, shows that the opinion therein considered, construed, and passed upon Sections 44.01 to 44.18, inclusive, together, and held that none of them were subject to attack upon the constitutional grounds assigned by the Gospel Army, although special consideration was given to certain sections. These comprise all of the ordinance except Section 44.19 relative to "Promoters" and 24.01 regulating Pawn Brokers and Junk Dealers. The opinion in that case does not mention by number all of the sections in the group 44.01 to 44.18; and among those not so mentioned is 44.09 (27 A. C. 248-253). Thus, by adopting the first portion of the Gospel Army opinion, the instant opinion upholds as constitutional all of said group of sections.

It is stated that the Ordinance is regulatory to prevent fraud and deception in the solicitation of funds and that "it is clear that the intent is to regulate charitable solicitations whether or not they are part of a religious purpose" (28 A. C. 487).

In justifying such regulations *Cantwell* v. *Connecticut*, 310 U. S. 296, is quoted, and *Reynolds* v. *United States*, 98 U. S. (28 A. C. 485).

In upholding Section 44.09, said opinion holds that "sufficient standards for the issuance of the permit are inherent" in the section although not contained in its language, which inherent standards are that it appear to the Board from the information secured that the solicitation as planned would not interfere "with the public convenience and safety" and there must be an absence of disclosure of fraud, and it is adjudged and determined that said section is reasonable and "assures regulations without discrimination as to persons or causes". The opinion states that in the matter of restraint imposed said section is not like the statute condemned in *Cantwell* v. *Connecticut*, 310 U. S. 296, (28 A. C. 487).

With respect to subdivision "(b)" of Section 44.09, said opinion holds that the provision requiring the giving of the "Notice of Intention", provided in Section 44.05 and compliance with other provisions of the "Article", to-wit: the Ordinance involved, is constitutional and valid for the reasons stated in "the Gospel Army case" (28 A. C. 488).

The dissenting opinion by Justice Carter begins by upholding petitioners contention that "the Ordinance involved is clearly unconstitutional;" the opinion refers to the writers dissenting opinion in *Gospel Army* v. *City of Los Angeles*, 27 A. C. 246, 264, for a statement of the reasons. (28 A. C. 490.)

The opinion quotes Section 44.09(a) as follows:

> "No person shall solicit *any* contribution for *any purpose* by means of any box or receptacle, upon any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by express written permission of the Board." (Emphasis added.)

Justice Carter states that this language includes publicly owned or controlled property, and that, omitting the exception concerning permission, it is an absolute prohibition against solicitation in such places and that under *Murdock* v. *Pennsylvania,* 319 U. S. 105 and other cases this is a violation of petitioner Murdock's right to freedom of religion, and, hence the entire subsection is void (28 A. C. 491.)

The opinion holds that since the giving of official permission "is uncontrolled" that provision cannot save the whole subsection from unconstitutionality, citing *Cantwell* v. *Connecticut, supra,* and other decisions, with quotations from cases and digests. (28 A. C. 491).

The opinion declares that "the majority opinion by judicial legislation places those standards in the Ordinance," and that this attempt to unearth vague and uncertain standards cannot stand in the face of this Court's decision. *In re Porterfield,* 28 A. C. 102." (28 A. C. 493).

In the *Gospel Army* case, Justice Carter Dissenting Opinion, the jurist protests the lack of analysis of the Sections and provisions of the Ordinance and the mere generalizations with which he says the majority opinion is "replete"; he asserts a doubt that "even the author opinion would say that none are unduly onerous" as that opinion does, "were each regulation discussed in detail and given separate consideration." (27 A. C. Page 274). Justice Carter does this and concludes that the Ordinance and all of its principle provisions, are violative of the 14th Amend-

ment as infringements upon the right of religious freedom, due process or the equal protection of the laws. (27 A. C. 274-284).

The portion of Justice Carter's opinion in the Gospel Army case to which he refers in his dissent herein, calls attention to the "formula" provided by this Court in *Schneider* v. *Irvington*, 308 U. S. 147, for determining cases on appeal wherein the rights of freedom of the press or of religion conflict with other rights and asserts that the procedure followed in the majority opinion conflicts with said "formula rule," (27 A. C. 266), and Justice Carter points out that the provision of Section 44.16 of the Ordinance which exempts from its provisions only those religious activities which are "solely" for religious, missionary or evangelical purposes establishes an unwarranted religious test and empowers administrative officers to decide what purposes are "solely" of these types and he condemns as a violation of the right of religious freedom the rule that no license will be sold to a solicitor of the promoter class, unless the Board determines that fifty per cent of the collections shall go to the charitable purpose involved and in that behalf he relies upon the *Cantwell* v. *Connecticut* decision and *In re Rarte*, 172 Cal. 47. (27 A. C. 268-272).

This opinion of Justice Carter, as well as Justice Edmond's dissenting opinion in the Gospel Army case, to which the Carter dissent herein refers, rely upon the two cases last named to demonstrate that charity is an integral part of religion as preached and practiced by all true followers of Jesus or of the Jewish faith and that the instant Ordinance as a whole violates the right of freedom of religion in that, as he states, the majority opinion itself shows, said Ordinance purports to and does segregate and sever charity from religion, and by Section 44.16 removes from the religious field and arbitrarily places in the charity seg-

ment substantially all religious charities. (27 A. C. Pages 271-273 and Pages 289-291).

Justice Schauer concurred in the following statement:

> "I concur in the conclusion reached by Mr. Justice Carter and in the discussion supporting his conclusion insofar as it relates to the constitutionality of the ordinance involved herein."

Justice Edmonds' dissenting opinion reads:

> "For the reasons stated by me in the Gospel Army case, I am of the opinion that section 44.09 of the Los Angeles ordinance, as well as the provisions which were considered in the prior proceeding, are unconstitutional. Accordingly, I join in the conclusion that the writ of prohibition should issue."

The Petition for Rehearing

Thereafter and within the time allowed by law and the rules of the State Supreme Court, plaintiff petitioned said Court for rehearing of said appeal. This petition cannot well be condensed and its salient points are best shown by setting forth the principal paragraphs thereof, which read as follows:

"Reasons for the petition are:

The majority opinion and the decision of this Court indulges in judicial legislation without which the conclusion reached would have no foundation.

Said opinion is in apparent irreconcilable conflict with other leading decisions of this Court from which situation great confusion as to the law therein written results.

The instant decision and opinion errs in failing to recognize that sections of the ordinance involved are so dependent upon and interwoven with other sections thereof

and the whole scheme and plan of said law that they cannot be segregated and judicially appraised alone.

Said opinion and decision fails to consider questions presented by the petitioners without which a full and complete decision cannot be rendered."

Petitioners Specify the Following Grounds for Rehearing:

> "The opinion and decision herein adds to Section 44.12 of the ordinance involved, a provision of law which reads: 'The denial of a permit is warranted only if the information furnished the Board discloses fraud or if the solicitation as planned would interfere with the public convenience and safety.'
>
> "By adoption from the opinion in Gospel Army v. City of Los Angeles (recently delivered) the instant opinion enacts that 'the department is without authority to withhold such cards (inspection cards) when the requirements are met.' to-wit, 'the filing of the required information and payment of four cents for each.'"

The instant opinion errs in that it gives scant attention to sections of the ordinance other than 44.09 and 44.12, and none to the general plan and design of the law, although said sections, standing alone, and as applied to all solicitations, including those for religion, would be clearly violative of the 14th Amendment to the Federal Constitution as creating prior restraints upon the exercise of the right of religious freedom and as delegating to an administrative board powers to act unreasonably, arbitrarily and with partiality.

> (a) Section 44.09, as pointed out in the dissenting opinion by Mr. Justice Carter, contains three inhibitions.
>
> That contained in 44.09 (a) is clearly applicable to the instant case since the solicitations by Murdock for the Rescue Army concerns religious activities,

and the provisions for charities are expressly set forth in subdivision (b).

Section 44.09 (a) prohibits all solicitations through receptacles on public streets, etc., except with "express written permission of the Board." Hence the Board is unrestricted as to the exercise of its discretion. The said 14th Amendment, itself, permits such solicitations for religion, but the section permits the Board to refuse them at its own unbridled discretion or groundless whimsy.

(b) Section 44.12 applies to all solicitation for charitable purposes. The ordinance purports to regulate them. However, its classification and definition of charities includes religious purposes if any fraction of the money or goods is to be used for charity. (Section 44.16.)

Also, to "exhibit an information card" as Section 44.12 requires, involves the prior securing of such card (Section 44.02). This much the opinion herein notices, but it fails to consider numerous other sections necessarily involved in securing such card.

True, said opinion refers to the Gospel Army opinion in this behalf, but that opinion failed entirely to analyze or elucidate such other sections although the dissenting opinions in that case perform that function and unanswerably show that separately, and as a whole, prior restraints upon the exercise of the right of freedom of religion and of charity of a prohibitive, arbitrary and highly prejudicial character are created.

(a) The opinion herein is defective and errs in that it fails to consider the assignment in the petition that the provision of said ordinance which authorizes the Department of Social Service to "approve" such charitable associations" as it deems are entitled to approval and thereby exempt them and their solicitors from all of the procedural requirements of the ordinance, including those in Sections 44.12 and 44.09, empowers said Department to grant immunities and privileges to a class while

denying the same to others in violation of said 14th Amendment and of Article I, Section 21 of our State Constitution.

This issue is directly involved in the instant appeal.

(b) Said opinion and decision, in holding Sections 44.09 and 44.12 constitutional, fails to consider that in order to obtain the "Information Card" required therein the applicant must file a notice of intention, of a voluminous character, supply any and all "additional information" which the Department sees fit to demand; wait while said Department conducts an investigation of unlimited scope, if it chooses to do so; have the written authorization of the person or organization he represents, and he or it must maintain an accounting system.[1]

These are among the burdens to be borne prior to securing an information card to be exhibited in soliciting pursuant to Section 44.12. Legally or illegally, they are all prior restraints upon solicitation, and to pass upon the legality of Section 44.12 without considering them is to exclude the gist of the last section. Other sections add even greater burdens, after solicitations are made. Section 44.05 to 44.16, inclusive, are one unit and Section 44.12, alone, is insignificant as a revelation of its true import and the prior restraints which it entails.

(c) The petition for issuance of a writ of prohibition and the petition for hearing in this Court squarely present the issue that petitioners' activities for which Murdock is prosecuted are religious, and that to require, as the ordinance does, that they be licensed through the issuance of an "Information Card" is a clear infringement of the right to exercise religious freedom and of the 14th Amend-

[1] Section 44.05, of which Justice Carter in the *Gospel Army* case said: "The much maligned income tax forms . . . are no more complex and demanding."

ment to the Federal Constitution, and since no such license can be lawfully made a prerequisite to solicitation for religious purposes Sections 44.12 and 44.09 are necessarily unconstitutional exactions.

The instant opinion applies these provisions of an ordinance purporting to regulate charities to religious activities. Yet no mention of the religious feature is made or justification provided by reference to the arbitrary provision of the ordinance which classifies all solicitations not "purely" religious as charitable.

Petitioners have argued to this Court that the entire ordinance, including Sections 44.09 and 44.12 are violative of the right of religious freedom by reason of said unreasonable and unwarranted classification, and, it is submitted, the validity of the last-named sections cannot be determined without consideration of the validity of the "purely for religious" provision.

Petitioners have claimed that Sections 44.09 and 44.12 are rendered invalid under the equal protection of the laws clause of the 14th Amendment to the Federal Constitution by the provisions of Section 44.03, which empowers the City Board to exempt others similarly situated from compliance with Sections 44.09 and 44.12. The opinion and decision herein fails to consider this issue.

For the foregoing reasons and upon the grounds above set forth petitioners adhere to their contentions heretofore made in respect to the ordinance as a whole and Sections 44.09 and 44.12 in particular are violative of the privileges and immunities clause, the equal protection of the laws clause, and the due process guaranty of the 14th Amendment to the Constitution of the United States, and ask that a rehearing of this appeal be ordered.

ROBERT H. WALLIS,
Counsel for Appellants.

APPENDIX JURISDICTIONAL STATEMENT

Opinions of Court

GIBSON, *C. J.*

Petitioners seek a writ of prohibition to restrain the Municipal Court of the City of Los Angeles from proceeding to try petitioner Murdock for the alleged violation of certain sections of an ordinance, regulating the solicitation of contributions, which it is claimed are in conflict with the federal Constitution, Amendments I and XIV, and the California Constitution, Article I, section 21. It is alleged that Murdock has been twice convicted of a violation of the ordinance, that each time the conviction was reversed by the appellate department of the superior court, that a third trial has been ordered, and that the respondent court will proceed therewith unless restrained.

(1a) The constitutionality of a statute or ordinance may be tested by prohibition on the ground that invalidity of the legislation goes to the jurisdiction of the court to proceed to try the case. (See Whitney *v.* Superior Court, 182 Cal. 114 (187 P. 12); Levy *v.* Superior Court, 105 Cal. 600 (38 P. 965, 29 L.R.A. 811); Arfsten *v.* Superior Court, 20 Cal. App. 269, 275 (128 P. 949); cf. Broady *v.* Jennings, 70 Cal. App. 647 (234 P. 120).) This rule is supported by the great weight of authority in other states. (See cases collected in 113 A.L.R. 796, 800; 42 Am. Jur. 168.) The same principle has been applied in cases where habeas corpus has been used to test the constitutionality of an ordinance. (See In re McCoy, 10 Cal. App. 116, 124-125 (101 P. 419); In re Vitalie, 117 Cal. App. 553, 557 (4 P. 2d 171); cf. Ex parte Kearny, 55 Cal. 212; Ferris, Extraordinary Remedies (1926) 83; 1 Bailey on Habeas Corpus (1913) 91-93; 25 Am. Jur. 164.) Although the right to discharge by habeas corpus is not limited to cases in which a court has exceeded its jurisdiction (see Pen. Code, 1485, 1487; In re Bell, 19 Cal. 2d 488, 492-495 (122 P. 2d 22); Portnoy *v.* Superior Court, 20 Cal. 2d 375, 378 (125 P. 2d 487)), the writ has been traditionally used for that purpose. (See In re Vitalie, 117 Cal. App. 553, 557 (4 P. 2d 171).)

The view that constitutionality goes to jurisdiction has at times disturbed the courts because of the possibility that full application of the theory might render otherwise final judgments vulnerable to collateral attack, and confusion also has sometimes arisen because of a failure to understand that a court has jurisdiction to determine its own jurisdiction in the first instance. The difficulties inherent in applying the term jurisdiction in cases involving unconstitutional statutes impelled the court in the Bell case to recognize that habeas corpus may be used in certain situations to test the constitutionality of a statute whether or not there is a want of jurisdiction. (19 Cal. 2d at pp. 492, et seq.) In Prohibition, however, we are limited by statute to proceedings without or in excess of jurisdiction (Code Civ. Proc., 1102) and we are therefore squarely confronted with the problems referred to above.

(2a) The fact that a trial court has no jurisdiction within the meaning of the term as used in certiorari and prohibition proceedings does not mean that a judgment based upon an unconstitutional statute is open to collateral attack. In Chicot County D. Dist. *v.* Baxter State Bank, 308 U. S. 371 (60 S. Ct. 317, 84 L. Ed. 329), a civil case, the court declared that broad statements to the effect that unconstitutional laws confer no rights whatsoever must be taken with qualifications and that a decree based upon an assumption of validity is res judicata. (See, also, 136 A. L. R. 1032; (1942) 28 Va. L. Rev. 656-657; (1942) 27 Iowa L. Rev. 315-322 and (1942) 26 Minn. L. Rev. 658-661.) (3) In certiorari and prohibition proceedings the term jurisdiction has a very broad meaning, and a writ may be granted where the court has no jurisdiction to act except in a particular manner, even though it has jurisdiction, in the fundamental sense, over the subject matter and the parties. (Abelleira *v.* District Court of Appeal, 17 Cal. (2d) 280, 287 *et seq.* (109 P. (2d) 942, 132 A. L. R. 715); Hill *v.* Superior Court, 16 Cal. (2d) 527 (106 P. (2d) 876); Fortenbury *v.* Superior Court, 16 Cal. (2d) 405 (106 P. 2d 411).) (2b) It does not follow, therefore, that to allow prohibition in such cases will result in opening the door to collateral attack.

(1b) The Bell case correctly declares that the trial court has jurisdiction to determine whether the statute is constitutional, and the same is true as to any other jurisdictional defense. The mere assertion of a claim of unconstitutionality does not oust the trial court of jurisdiction, because the very issue of constitutionality is one which the court has jurisdiction to determine. (See discussion, In re Bell, supra, 19 Cal. 2d 488, 492.) This proposition, however, is not inconsistent with the holding that prohibition lies to restrain a court from proceeding without or in excess of jurisdiction. (See Abelleira *v.* District Court of Appeal, 17 Cal. 2d 280 (109 P. 2d 942, 132 A. L. R. 715); Hill *v.* Superior Court, 16 Cal. 2d 527 (106 P. 2d 876).) A court has jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and it must have authority to decide that question in the first instance. (4) It is necessary, therefore, to challenge the jurisdiction of the trial court in that court, by demurrer, motion, plea or other objection of some kind, so that that court may preliminarily decide the question whether it has jurisdiction to proceed. And unless a party can show that a lower tribunal, after first determining that it has jurisdiction, is proceeding to exercise it, there is nothing for a higher court to prohibit. This obvious principle is one of the cornerstones of our system of lower and higher tribunals.

(5) The statement in Portnoy *v.* Superior Court, 20 Cal. 2d 375, 387 (125 P. 2d 487), that a trial court is not deprived of jurisdiction to determine the constitutionality of a particular ordinance or statute by virtue of the fact that it may decide the question erroneously, is properly applicable to this basic right of the trial court to decide the question of jurisdiction in the first instance.

(1c) When, however, the trial court has heard and determined the jurisdictional challenge, and has decided in favor of its own jurisdiction, and then proceeds to act, that is, to try the cause on its merits, the situation is entirely different. It then may be properly claimed that a court without jurisdiction is purporting to exercise it.

At this stage, jurisdiction to determine jurisdiction has been exercised, and the higher courts will, in an appropriate case, restrain the lower court from acting in excess of jurisdiction (see, e.g., Greenberg *v.* Superior Court, 19 Cal. 2d 319 (121 P. 2d 713); Abelleira *v.* District Court of Appeal, 17 Cal. 2d 280 (109 P. 2d 942, 132 A. L. R. 715); Jackson *v.* Superior Court, 10 Cal. 2d 350 (74 P. 2d 243, 113 A. L. R. 1422).) (6) The petition should affirmatively allege that the challenge to jurisdiction was raised in the lower court.

Although the petition in the present case does not affirmatively allege that the jurisdiction of the municipal court was challenged by an appropriate motion, the parties do not assert such a challenge was not made, and since Murdock has been twice tried for the violation of an ordinance which from the outset he has claimed to be unconstitutional, and the case has been set for trial a third time, it is apparent that the court has decided in favor of its own jurisdiction and is proceeding to exercise it. Moreover, although the requirement that before applying for prohibition the claim of unconstitutionality must be made in the trial court has been generally observed in practice (see Jackson *v.* Superior Court, supra, the Greenberg *v.* Superior Court, supra) the requirement that the petition must affirmatively allege compliance with the condition has not been emphasized in previous decisions of this court. Under these circumstances we have determined that it is not in the interests of justice to refuse to entertain the application because of the absence of a more complete showing in the petition.

(7) It is not, of course, a proper case for prohibition if there is a plain, speedy and adequate remedy in the ordinary course of law. As we have seen, the constitutional challenge may ordinarily be made by demurrer or motion in the trial court. In addition, habeas corpus may be used to test the constitutionality of a statute (In re Bell, 19 Cal. 2d 488 (122 P. 2d 22)), and the availability of that remedy has been held to be a complete bar to the issuance of prohibition. (Leach *v.* Superior Court (1932), 215 Cal. 531 (12 P. 2d 1).) But where, as here, the defendant cannot use habeas corpus because he is not being deprived of his

liberty, he should not be refused prohibition, while awaiting trial, solely on the ground that habeas corpus would be available if he would submit to imprisonment.

(8) The next question, therefore, is whether trial and appeal are adequate remedies under the circumstances of this case. A remedy is not inadequate merely because more time would be consumed by pursuing it through the ordinary course of law than would be required in the use of the extraordinary writ of prohibition. (Bennett *v.* Superior Court, 218 Cal. 153, 156 (21 P. 2d 946); Lindley *v.* Superior Court, 141 Cal. 220 (74 P. 765); Agassiz *v.* Superior Court, 90 Cal. 101 (27 P. 49).) Experience has shown that most of the meritorious defenses are sustained and most of the unsubstantial constitutional or other objections are weeded out at the proper time on the proper showing during the trial or on appeal. These remedies are therefore considered adequate in the usual situations. If this were not so, then whenever jurisdiction is challenged prohibition would lie and the trial of the case would be interrupted until the reviewing court passed upon the intermediate question and appellate courts in many cases would be converted into nisi prius courts. (Agassiz *v.* Superior Court, 90 Cal. 101, 103 (27 P. 49).)

It does not follow, however, that the remedies of trial and appeal must be considered adequate in all situations. It has been held in two recent cases that these remedies did not afford sufficient relief under the circumstances there presented. (Greenberg *v.* Superior Court, 19 Cal. 2d 319 (121 P. 2d 713); Jackson *v.* Superior Court, 10 Cal. 2d 350 (74 P. 2d 243, 113 A. L. R. 1422).) In the Jackson case an attempt was made to retry the defendants on the identical charge for which they previously had been in jeopardy. In the Greenberg case there was an indictment of an individual against whom no evidence at all was presented to the grand jury. The issue of jurisdiction was first raised in both cases by motion or demurrer in the trial court and petitioners sought prohibition only after an adverse ruling below. The disregard of the fundamental rights of the defendants in these cases was so obvious and flagrant that this court felt that the expense, effort and delay of trial in the superior court would be an unfair burden on the petitioners.

(9) The fact that the remedies of trial and appeal were considered adequate in some cases and not in others does not mean that the application for the writ was arbitrarily granted in one and refused in another or that the decisions cannot be reconciled on principle. It is difficult, if not impossible, to lay down a hard and fast rule which will govern all situations, and it must be determined in each case, not only on the basis of precedent but from an examination of all the facts, whether there is an adequate remedy in the ordinary course of law. A reviewing court, in order to prevent a failure of justice, has discretion in accordance with established legal principles and practice, to determine the circumstances which justify the use of prohibition to restrain a lower tribunal from acting without or in excess of its jurisdiction. And in the exercise of that discretion it may take into consideration the desirability of the prompt settlement of an important jurisdictional question so that a multiplicity of void proceedings in other cases will be prevented.

(10) As heretofore pointed out, petitioner Murdock has been subjected to two trials and has successfully prosecuted two appeals from judgments of conviction. We granted a hearing in this matter after petitioners' application for a writ to restrain a third trial was denied by the district court of appeal, and, in order to secure uniformity of decision of related problems, transferred to this court the appeal in Gospel Army *v.* City of Los Angeles,[2] 27 Cal. 2d 232 (163 P. 2d 704), in which plaintiff sought to enjoin the enforcement of the same ordinance. We should not under these circumstances, in fairness to petitioner or respondent court, refuse to decide in this proceeding the jurisdictional question involved in the criminal charges, on the ground that there is a plain, speedy and adequate remedy by trial and appeal.

We come, therefore, to the question whether the sections of the Los Angeles Charities and Relief Ordinance under which Murdock is charged are unconstitutional. In the Gospel Army case, supra,[3] page 232, we examined this legislation and some of the basic problems here involved are

[2] Advance Report Citation: 27 A. C. 246.
[3] Advance Report Citation: 27 A. C. 246.

answered by our decision in that case, but we did not have occasion to deal specifically with one of the sections of the ordinance under which Murdock is charged. A certain amount of repetition of our discussion in the Gospel Army case is unavoidable if we are to present in an orderly and understandable manner the issues raised by petitioners' contentions in this proceeding.

Insofar as pertinent here, the ordinance provides that no person shall solicit any contribution for any charitable purpose unless there shall be filed with the Department of Social Service written notice of intention to solicit, together with information concerning the character of the solicitation, how it is to be made, and the purpose for which the funds are to be used. (44.05.)[4]

The department is authorized to investigate the statements made by the applicant and to issue information cards setting forth such facts as may be necessary to

[4] Sec. 44.05. CHARITY SOLICITATION—NOTICE OF INTENTION:

No person shall solicit, nor shall any officer or member of any association authorize any person to solicit, any contribution for any charitable purpose, unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

(a) The purpose of the solicitation and use of the contribution to be solicited;

(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention; the expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

acquaint the public with the nature and worthiness of the purpose for which the solicitation is made. (44.03.)[5]

The solicitor is required to exhibit the information card and read it to the person solicited, or present it for his perusal before accepting a contribution. (44.12.)[6]

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true and correct copy of the original of such resolution by the officer of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation.

[5] Sec. 44.03. Powers of Department:

The Department shall have the following powers:

(a) To investigate the allegations of Notice of Intention, or any statement or reports:

(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made:

(c) To investigate at any time the methods of making or conducting any such solicitation;

(d) To issue to all solicitors Information Cards which cards shall show:

(1) That same is issued as information for the public and is not an endorsement;

(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association:

(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;

(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made;

(e) To charge a fee for supplying Information Cards, at the rate of four cents per card; provided that when more than twenty-five cards are issued at one time for the same solicitation, the fee for all such cards in excess of twenty-five shall be one cent per card.

[6] Sec. 44.12. Solicitation—Information Card:

No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person solicited or presents it to said person for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited.

It is incumbent upon persons soliciting contributions for charity by means of receptacles in certain specified publicly owned and controlled places to secure the express written permission of the Board of Social Service Commissioners (44.09(a)[7]); and anyone making such solicitations by means of recepticlas in certain other places open or accessible to the public is required to file a "notice of intention" as required by section 44.05. 44.09(b).)

The ordinance is designed to protect the public from fraud and deception in the solicitation of funds for charity and to provide the public with information from which it may determine the nature and worthiness of the charitable purpose for which the collection is made. The regulatory provisions apply to all charitable solicitations, and though collections made solely for missionary, evangelical and other religious purposes are exempted therefrom, it is clear that the intent is to regulate charitable solicitations whether or not they are part of a religious program. In the Gospel Army case, supra,[7a] page 232, we held that the prior restraint thus imposed does not contravene the liberties guaranteed by the First Amendment.

In Reynolds v. United States, 98 U. S. 145, 164 (25 L. Ed. 244), Chief Justice Waite, in commenting upon a statement of Thomas Jefferson concerning the meaning of the First Amendment, to the effect "that the legislative powers of the government reach actions only, and not opinions,"

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[7] Sec. 44.09. (As amended by Ordinance No. 84,121, approved Feb. 5, 1941.) SOLICITATION—BOXES—RECEPTACLES.

(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by the express written permission of the Board.

(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a "notice of intention" as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article.

[7a] Advance Report Citation: 27 A. C. 246.

said: "Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or suversive of good order." Mr. Justice Roberts in Cantwell *v.* Connecticut, 310 U. S. 296, 303-304 (60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352), restated the rule in clear and simple language, as follows: "Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society."

(11) There can be no question, therefore, that a person is free to hold whatever belief his conscience dictates, but when he translates his belief into action he may be required to conform to reasonable regulations which are applicable to all persons and are designed to accomplish a permissible objective. Gospel Army *v.* City of Los Angeles, supra,[7b] p. 232.)

Petitioners allege that Murdock was charged with having violated sections 44.09 and 44.12 of the Charities and Relief Ordinance.

Section 44.12, requiring a solicitor to exhibit an information card to the person solicited, was approved in the Gospel Army case, supra,[7c] page 232. We held in that case that information cards issue automatically upon the filing of the required information and the payment of the four cents for each card, and that the department is without authority to withhold such cards when the requirements are met. What we said there disposes of petitioners' contentions here with respect to the validity of the charge against Murdock based on this provision.

(12) We had no occasion in the Gospel Army case, however, to give specific consideration to section 44.09 which underlies the other charge pending against Murdock. Subdivision (a) of this section makes it incumbent upon per-

[7b, 7c] Advance Report Citation: 27 A. C. 246.

sons soliciting contributions for charitable purposes by means of receptacles in certain specified publicly owned or controlled places to secure the express written permission of the board. It is well known that religious and charitable organizations frequently use receptacles to collect money from individuals in public places. It is obvious that it would be exceedingly difficult to obtain contributions in congested areas if the solicitor had to present each person solicited with an information card. It is apparent also that it would be hard to enforce a requirement of that kind under such circumstances.

When section 44.09 (a) is read in the light of these circumstances and difficulties which give rise to the necessity for the requirement of a permit when contributions are to be solicited by receptacles, sufficient standards for the issuance of such permit are inherent in and follow from the reasons requiring it. While persons solicited by means of an information card are thereby sufficiently advised to discern any unfair or fraudulent scheme, passers-by solicited by means of receptacles have no similar chance of protecting themselves. Hence, if fraud appears from the information secured from those seeking to solicit by means of receptacles, the board should decline to issue a permit. Otherwise, solicitation by this method would secure financial support that unquestionably would be denied if the solicitation were made by use of an information card which disclosed the fraud to the persons solicited. In addition to protection against fraud, the requirement of a permit to solicit charitable contributions in public places by means of receptacles, assures protection with respect to the maintenance of the public convenience and safety for it is conceivable that solicitation by this method under some conditions would interfere with the free flow of traffic. We conclude, therefore, that if subdivision (a) of section 44.09 is read, as it must be, in light of the purpose and context of the entire ordinance, on the one hand, and the peculiar circumstances attendant upon collections by means of receptacles in public places, on the other hand, that the denial of a permit is warranted only if the information furnished to the board discloses fraud or if the solicitation as planned would interfere with the public convenience and safety. So

construed, the standards applicable to the granting of the permit are reasonable and the condition imposed by subdivision (a) does not prevent or unduly restrict the collection of funds. The requirement of the subdivision is not only reasonable but assures regulation without discrimination as to persons or causes. It may be added that the numerous other recognized methods of collecting funds are available to petitioner.

It is suggested that subdivision (a) imposes the same restraint as did the statute condemned in Cantwell *v.* Connecticut, 310 U. S. 296 (60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352). That statute prohibited solicitation of money for religious, charitable or philanthropic causes without the approval of an administrative official. The ordinance challenged in this proceeding, however, is materially different from the statute involved in the Cantwell case. The statute there condemned empowered an administrative official to appraise the facts and to withhold permission to solicit if he determined the cause was not a religious one. The court held that to so limit the right of solicitation placed a forbidden burden upon the exercise of religious liberty.

It is clear, however, from what has been said before that the right to the permit required in subdivision (a) of section 44.09 does not depend upon a religious test. The board is not authorized or empowered to appraise the nature or worthiness of a religious cause or to deny a permit upon the ground that the cause is not a religious one. As before stated, the authority of the board is limited to regulating the issuance of permits for the solicitation of funds in the designated publicly owned or controlled places by means of receptacles for the sole purpose of preventing fraudulent practices and protecting the safety and convenience of the public. It is held in the Cantwell case that "a State may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community; without unconstitutionally invading the liberties protected by the Fourteenth Amendment."
The general regulation, in the public interest, of solicita-

tion, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise." (310 U. S. 304, 305.)

Subdivision (b) of the section relates to the solicitation of charitable contributions by means of receptacles in certain specified places not included in subdivision (a). In such cases the solicitor is required to give the "notice of intention" provided for in section 44.05. That section was approved in the Gospel Army case and for the reasons there stated the requirements of section 44.12 are valid.

Petitioners further contend that the ordinance is being unconstitutionally applied as to them. The allegations relied upon in support of this contention, however, are denied by the answer and the issues of fact thus presented will not be determined by us in this proceeding.

We conclude, therefore, that the provisions of the ordinance underlying the charges against Murdock are constitutional, and that in the absence of admitted or proven facts showing that the ordinance is being unconstitutionally applied, the alternative writ must be discharged and the peremptory writ must be denied. It is so ordered.

Shenk, *J.*, and Spence, *J.*, concurred.

Carter, *J.*, Dissenting:

I agree that the instant case is a proper one for review by a writ of prohibition but I cannot agree with the reasoning followed by the opinion of Chief Justice Gibson in arriving at that result.

It is fundamental that a court, whether it is a trial or appellate court, has the jurisdiction to determine its own jurisdiction. (In re Grove Street, 61 Cal. 438; Clary *v.* Hoagland, 6 Cal. 685; Cohen *v.* Barrett, 5 Cal. 195; In re Meisner, 30 Cal. App. 2d 290 (86 P. 2d 124); In re Wyatt, 114 Cal. App. 557 (300 P. 132); Fitzpatrick *v.* Sonoma County, 97 Cal. App. 588 (276 P. 113); In re Tassey, 81 Cal. App. 287 (253 P. 948); Dillon *v.* Dillon, 45 Cal. App. 191 (187

P. 27); (21 C. J. S., Courts 113). The general rule is stated in 21 Corpus Juris Secundum, Courts, section 113. "Every court has judicial power to hear and determine, or inquire into, the question of its own jurisdiction, both as to parties and as to subject matter, and to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction." And as a necessary corollary to that proposition it has jurisdiction to decide the jurisdictional question wrongly as well as rightly. (Portnoy *v.* Superior Court, 20 Cal. 2d 375 (125 P. 2d 487); In re Bell, 19 Cal. 2d 488 (122 P. 2d 22); Truck Owners etc., Inc. *v.* Superior Court, 194 Cal. 146 (228 P. 19); Morehouse *v.* Superior Court, 124 Cal. App. 38 (12 P. 2d 133).) These things are conceded by the opinion of the chief justice but it goes on to say that once it has decided the question erroneously and is proceeding to exercise that jurisdiction it may be restrained by a higher court from exercising it; that at that stage jurisdiction to determine jurisdiction has been exercised, implying that thereafter the court does not have jurisdiction because it has decided erroneously, and hence one of the extraordinary writs for testing jurisdiction will lie. The fallacy in that reasoning lies in the assumption that at some stage in the proceeding the court suddenly steps from a possession of power to a lack of it when all of the time the basic question was present of whether or not it has jurisdiction. A court may determine its jurisdiction at any stage of the proceeding. It is always an issue before it. (Williams *v.* Sherman, 36 Idaho 494 (212 P. 971).) It is probably due to the thought that if a court has jurisdiction to decide its own jurisdiction correctly or incorrectly, its determination cannot be questioned by a jurisdictional writ, that leads to the idle distinction between power to determine power and the exercise of the power once a favorable determination is made. The issue need not be complicated in that fashion. It is simple. Of course a court has jurisdiction to decide its jurisdiction, and it may be right or wrong. In either event the jurisdictional writs lie to review its decision to ascertain whether the conclusion was correct. We are assuming that the court in making its decision is passing upon a question of jurisdiction. The question still remains one of jurisdiction

after the decision as well as before and hence the jurisdictional writs are available to review it. The higher court entertaining the writ may conclude that the lower court was correct in its result and deny relief or the opposite conclusion may be reached and relief granted.

Perhaps the reasoning in the majority opinion was adopted to escape the untenable position taken by the majority of this court in Portnoy *v.* Superior Court, supra. It was there stated, after declaring that a court had jurisdiction to determine jurisdiction (the constitutionality of a statute) erroneously: "In the present case both the justice's court and the superior court on appeal have held that the ordinance is constitutional, and it cannot be said that in so holding they had exceeded their jurisdiction." This statement is clearly contrary to the holding in the majority opinion in the case at bar. If, as conceded in the opinion of the chief justice, the issue of constitutionality goes to the jurisdiction of the court, then that issue is still present and the decision of the court on that issue was subject to review by certiorari. The issue thus boils down to the simple proposition that whenever a lower court decides a jurisdictional question its decision is subject to review by certiorari, prohibition, habeas corpus or other appropriate writ. That must be so because the question involved goes to the jurisdiction of the court. This does not mean that the lower court will not be given the opportunity to first decide the jurisdictional question. That is a matter of procedure—a matter of whether and when the higher court deems it wise to intercede—all of which is involved in the problem of whether other remedies are adequate. It does not involve the controversy of whether a jurisdictional question is present.

This brings us to the question of whether such a question is involved in the instant case, remembering that we are not concerned with the accuracy of the lower court's decision or its power to pass upon it. The constitutionality of a statute under which a court is acting goes to the jurisdiction of the court (Whitney *v.* Superior Court, 182 Cal. 114 (187 P. 12); Levy *v.* Superior Court, 105 Cal. 600 (38 P. 965, 29 L. R. A. 811)), and if it is unconstitutional, any order or judgment made or rendered pursuant thereto is void

and subject to collateral attack. The situation is not different than if the crime charged had been committed outside the territorial limits of the area over which the court had jurisdiction or was a crime which was within the exclusive jurisdiction of another court. In either case the lower court would have no jurisdiction to proceed with a prosecution and a higher court could issue a prerogative writ to stay such prosecution at any point. Antilla *v.* Justice's Court, 209 Cal. 621 (290 P. 431).

The ordinance involved is clearly unconstitutional. I have set forth in my dissenting opinion in Gospel Army *v.* City of Los Angeles,[8] 27 Cal. 2d 232, 250 (163 P. 2d 704), the reasons for that conclusion and I here repeat those views.

There are additional factors applying to the particular provision of the ordinance involved in the instant case, which render such provision invalid. The provision reads (44.09 (a)): "No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any public street, sidewalk or way, of in any public park or in any publicly owned or controlled place, except by express written permission of the Board." The language is broad and comprehensive. Giving effect to all of its language as must be done in interpreting an ordinance, it clearly reaches solicitation on public property whether the receptacle is carried by the soicitor, and there is no obstruction of traffic, or is placed in or on the public place and is under the supervision of an attendant, or is left unattended. All three of those aspects of the solicitation are necessarily included in the wording and cannot be separated. If the provision is invalid as to one of them it is invalid as to all. Leaving aside for the instant the authority of the officials to give permission to solicit thereunder, that is, treating the clause as an absolute prohibition against soliciting on public property by use of a receptacle, it is clearly a violation of Murdock's right to freedom of religion. The solicitation of funds for the cause is a legitimate incident of the exercise of religious freedom. The exercise of that freedom even though receptacles are used

[8] 27 A. C. 246, 264.

cannot be wholly limited to places other than public property. In commenting on a statute stating that no child under certain ages shall sell any magazine or merchandise on any street or in any public place, the Supreme Court of the United States stated in Prince *v.* Massachusetts, 321 U. S. 158, 167 (64 S. Ct. 438, at page 443; 88 L. Ed. 645, 653): "Concededly a statute or ordinance identical in terms with Section 69, except that it is applicable to adults or all persons generally, would be invalid. Kim-Young *v.* California, 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155; Nichols *v.* Massachusetts, 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155; Jamison *v.* Texas, 318 U. S. 413, 63 S. Ct. 669, 87 L. Ed. 869; Murdock *v.* Pennsylvania, 319 U. S. 105, 63 S. Ct. 870, 87 L. Ed. 1292, 146 A. L. R. 81; Martin *v.* City of Struthers, 319 U. S. 141, 63 S. Ct. 862, 87 L. Ed. 1315." And later: "Street preaching, whether oral or by handing out of literature, is not the primary use of the highway, even for adults. While for them it cannot be wholly prohibited, it can be regulated within reasonable limits in accommodation to the primary and other incidental uses."

The fact that solicitation may be made under section 44.09 (a) by express permission of the public officials does not save it. Where a statute is void on its face, such as is true of subdivision (a), the mere fact that an official may give consent to the conduct does not cure it when, as far as appears, the discretion of the official is uncontrolled—is guided by no valid signposts and he may act arbitrarily. Nor need a permit be sought under such circumstances as a prerequisite to raising the constitutional question. (See Cantwell *v.* Connecticut, 310 U. S. 296 (60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352); Schneider *v.* State, 308 U. S. 147 (60 S. Ct. 146, 84 L. Ed. 155); Hague *v.* C. I. O., 307 U. S. 496 (50 S. Ct. 954, 83 L. Ed. 1423); Lovell *v.* Griffin, 303 U. S. 444 (58 S. Ct. 666, 82 L. Ed. 949); Smith *v.* Cahoon, 283 U. S. 553 (51 S. Ct. 582, 75 L. Ed. 1264); cf. Cox *v.* New Hampshire, 312 U. S. 569, 577-578 (61 S. Ct. 762, 85 L. Ed. 1049, 133 A. L. R. 1396).)

There are no standards whatsoever which the enforcing officials must follow in determining whether the permit shall be issued. The legislative body has made no determination that traffic dangers are to be avoided or fraud

prevented. The refusal of the permit is not conditioned on any traffic hazard or obstruction or that the solicitor is engaged in a fraudulent scheme. In Hague v. C. I. O., 307 U.S. 496 (59 S. Ct. 954, 83 L. Ed. 1423), the issue was the validity of an ordinance which denied use of the streets without a permit giving no standards to the officials. The court said, at page 516: "It does not make comfort or convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage.' It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs, for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right." In the instant case, we have freedom to exercise one's religion—a right in the same class as freedom of speech. Here the ordinance does not make convenience or use of public streets a test for the standard of official action. The permit may be denied on the "mere opinion" of the official that fraud or traffic hazards may occur.

The note in 128 A. L. R. 1361 is illuminating: "While there is a conflict among the state court decisions as to the validity under the Fourteenth Amendment to the Federal Constitution of statutes or ordinances regulating the solicitation of contributions for charitable, religious, or individual purposes by prohibiting such solicitation without a license and providing that the licensing officer or body shall issue such a license only where he deems the applicant a worthy person and his cause a worthy or bona fide cause, it is not settled by decisions of the Supreme Court of the United States that such a statute or ordinance is void, since it authorizes a previous restraint upon the free exercise of the freedoms guaranteed by the Fourteenth Amendment by a licensing officer or body having no fixed standard for determining whether a license must be issued."

It is aptly said in Schneider *v.* State, 308 U. S. 147, 163 (60 S. Ct. 146, 84 L. Ed. 155): "It bans unlicensed communication of any views or the advocacy of any cause from door to door, and permits canvassing only subject to the power of a police officer to determine, as a censor what literature may be distributed from house to house, and who may distribute it. The applicant must submit to that officer's judgment evidence as to his good character and as to the absence of fraud in the 'project' he proposes to promote or the literature he intends to distribute, and must undergo a burdensome and inquisitorial examination, including photographing and fingerprinting. In the end, his liberty to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion." (See, also, Hoyt Bros. Inc. *v.* Grand Rapids, 260 Mich. 447 (245 N. W. 509).)

The only answer offered by the majority opinion to the lack of a standard for the issuance of permits is that (as a test for the denial of permits there must be either fraud or an interference with the public safety or convenience. There is no mention whatsoever of those tests in section 44.09(4). The board is given unlimited power in passing upon an application for a permit. The majority opinion by judicial legislation places those standards in the ordinance. This attempt to unearth vague and uncertain standards cannot stand in the face of this court's decision in In re Parterfield,[9] ante, p. — (168 P. 2d 706). This court there struck down an ordinance requiring a license (permit) to solicit, and quoted with approval from American Law Reports as follows (page[10] —): "A statute or ordinance which vests arbitrary discretion with respect to an ordinarily lawful business . . . in public officials, without prescribing a uniform rule of action, or, in other words, which authorizes the issuing or withholding of licenses . . . according as the designated officials arbitrarily choose, without reference to all of the class to which the statute or ordinance under consideration was intended to apply, and without being controlled or guided by any

[9] Advance Report Citation: Ante, p. 102.
[10] Advance Report Citation: Ante, p. 121.

definite rule or specified conditions to which all similarly situated might knowingly conform,—is unconstitutional and void." The court then went on to say (the ordinance there was much more explicit in its standards than in the instant case) that (p. 121) "It is to be noted that section 4 of the ordinance requires that application for a license be made in writing 'upon such forms as may be provided by said city council, a copy of which shall at all times be attached to said license.' The ordinance is utterly silent as to what the content of the forms shall be." No form whatsoever is provided in the case at bar. Continuing in the Porterfield case: "Section 6 provides that at the hearing to be held by the council on each application for a license, evidence shall be received of the good moral character of the applicant and whether or not he is likely to resort to force, violence, threat, menace, coercion, intimidation or corrupt means in his proposed work of solicitation. 'If the city council is satisfied that said applicant is of good moral character and will not resort to force, violence, threat, menace, coercion, intimidation or corrupt means in his proposed work of solicitation, it shall direct the issuance of a license to said applicant for said purpose of solicitation upon payment of the license fee herein provided for.'" In the case at bar there is no mention of moral character or character of a kind likely to indulge in violence, as a standard for issuing a permit. No standard whatever is set forth. Commenting on the terms of the ordinance there involved it is said in the Porterfield case (page[11] —): "We are of the opinion that on the face of the ordinance the indefinite standards which it enunciates provide a mechanism for the deprival of constitutional rights, not only on the basis of the guaranties applicable to free speech but also on the basis of those protecting the right to engage in lawful fashion in a lawful activity. It is pointed out by petitioner that the council members in the exercise of their power might very conceivably conclude that because of an applicant's labor union affiliations or because of his attitude upon controversial labor issues he did not have the prescribed qualities. It is entirely possible that

[11] Advance Report Citation: Ante, p. 122.

on occasion a majority of the council might be members of a rival labor union or they might be employers engaged in a controversy with the union represented by the applicant. Certainly the standard provided by section 6 of the Redding ordinance is entirely subjective. Each council member is left to determine in his own mind what is 'likely' to be the future conduct of the applicant. The character or extent of showing necessary to satisfy the council that the applicant is of good moral character and will not resort to the activities mentioned is not set forth. Satisfaction may be circumscribed by individual whim, caprice, or personal prejudice."

The ordinance in the case at bar cannot stand in the face of the tests applied in the Porterfield case. The ordinance involved in that case sought to place restrictions upon the constitutional right of freedom of speech. The ordinance in the case at bar seeks to restrict the constitutional right of freedom of religion. The ordinance in each case reposes in a board uncontrolled discretion to exercise arbitrary power in acting upon applications for permits to exercise such constitutional rights. The ordinance in the Porterfield case was held unconstitutional on that ground. It follows that the ordinance in the case at bar should likewise be held unconstitutional insofar as it trenches upon the constitutional right of petitioner herein.

In my opinion the writ should issue as prayed.

SCHAUER, *J.*

I concur in the conclusion reached by Mr. Justice Carter and in the discussion supporting his conclusion insofar as it relates to the constitutionality of the ordinance involved herein.

EDMONDS, *J.*

For the reasons stated by me in the Gospel Army case, I am of the opinion that section 44.09 of the Los Angeles ordinance, as well as the provisions which were considered in the prior proceeding, are unconstitutional. Accordingly, I join in the conclusion that the writ of prohibition should issue.

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IN THE

Supreme Court of the United States

October Term, 1946

No. 574

THE RESCUE ARMY, a corporation, and CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Appellee.

APPELLANT'S REPLY TO APPELLEE'S STATEMENT OF GROUNDS AGAINST JURISDICTION.

ROBERT H. WALLIS,
350 East Fourth Street, Long Beach, California,
Attorney for Appellants.

Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

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Appellants will reply as fully as seems necessary and proper to those portions of appellee's "Statement of Matter and Grounds Making Against the Jurisdiction" of this Court in this case which are pertintent to that question. They will briefly point out such statements as are irrelevant to that question or are otherwise inappropriate.

No purpose relevant to this Court's jurisdiction in this proceeding appears to be subserved by the comparison of the Rescue Army and the Gospel Army cases. Hence that

portion of appellee's statement is passed without discussion, otherwise that to point out that appellee has not claimed that jurisdiction herein is affected by the fact that one of the plaintiffs is a corporation, since the statement concedes that it is enough that Charles T. Murdock, the other plaintiff, is a natural person.

The situation as to parties plaintiff was the same in *Hague v. C. I. O.*, 307 U. S. 496, 84 L. Ed. 1423, cited by respondent.

The Judgment of the State Supreme Court Denying Petition for Writ of Prohibition Has Appealable Finality.

The first and only place in appellee's Statement Against Jurisdiction wherein appears matters relevant to that question is page 6. It is claimed that the judgment of the highest court of California denying a petition for a writ of prohibition restraining the lower court from entertaining jurisdiction is a judgment which "this court has never seen fit to" hold to be final for the purpose of appeal to this Court.

On the contrary the decisions of this Court have, it is believed, uniformly held that such judgments of the State Supreme Courts have appealable finality.

In *Mission ex rel. St. Louis B. & M. R. Co. v. Taylor*, 266 U. S. 200, 69 L. Ed. 247, in deciding this question the Court said:

> "The suggestion was made, at the argument, that this Court is without jurisdiction, because the judgment below was not final. The contrary is settled. The application for a writ of prohibition is an independent adversary suit which was finally by the

judgment under review. Detroit & M. R. Co. v. Michigan R. Commission, 24 U. S. 564, 570, 60 L. Ed. 802, 807, 36 Sup. Ct. Rep. 424."

In *Bandini Petroleum Co. v. Superior Court*, 284 U. S. 8, 76 L. Ed. 136, the Court, through Chief Justice Hughes, said:

> "This Court has jurisdiction. The proceeding for a writ of prohibition is a distinct suit and the judgment finally disposing of it is a final judgment within the meaning of Section 237(a) of the Judicial Code,"

citing six prior decisions rendered by this Court, including *Missouri, etc. v. St. Louis, supra.*

The *Bandini* appeal was from California and the opinion shows that under the laws of that state, as generally elsewhere, Prohibition is an independant adversary proceeding. On the same principle the same rule has been held applicable to judgments granting or refusing to grant mandamus in several cases, including *American Exp. Co. v. Michigan*, 17 U. S. 404, 406, 44 L. Ed. 823, 824.

Quotations in Appellant's Jurisdictional Statement Are Proper Under Rule 12, Rules of This Court.

It seems that appellee's counsel has misunderstood that portion of the Jurisdiction Statement filed by appellants of which the Statement Against Jurisdiction asserts, appellants

> "have seen fit to discuss in some detail the merits of the case, the substance of the pleadings, answering briefs, reply briefs and amicus curiae brief, and have included rather copious quotations therefrom."

The purpose of the "copious quotations" was an intention to comply with Rule 12, the third paragraph of the Rules of this Court concerning the "Jurisdictional Statement," wherein "such pertinent quotations of specific portions of the record" are required "as will support the assertion that the rulings of the Court were of a nature to bring the case within the statutory provision believed to confer jurisdiction on this Court."

The quotations in the instant Jurisdictional Statement are intended to show how and when and the manner in which the claimed constitutional questions were raised by appellants and the identity of such questions; also that both sides and the State Supreme Court treated said questions as being involved and necessary to the decision of the case; and in that behalf appellants felt warranted in making such quotations more copious than would ordinarily be done in view of the fact that appellants felt it necessary to thereby show that the constitutionality of substantially all of the sections of the Ordinance involved had been challenged by appellants as plaintiffs in the State Court, and had been considered and passed upon by it.

It is believed that in this "Statement of Grounds upon which it is contended the questions involved are substantial" no "discussions" are to be found, but merely quotations and explanatory statements thereof as showing relativity, without which disconnected quotations lose their meaning. Also, in some instances, as permitted by the rule above mentioned, appellants summarized rather than quoted a part of a pleading or other document.

The Argument Portion of the Statement Against Jurisdiction, Page 8 et seq., Sets Forth No Matter Against Jurisdiction.

Apparently respondent's counsel regarded appellants' procedure as "discussing" the questions involved and therefore felt warranted in the argument or miniature brief set forth on pages 8 to 23 of the Statement Against Jurisdiction.

In due time appellants will file their brief and expect to refute the entire argument which appellee has presented.

However it seems opportune to point out briefly the following errors contained in said argument.

Appellant Murdock Has Been Injured.

The theory that appellant Murdock cannot be injured by the Ordinance involved because he alleged that he is engaged in purely religious activities and one section of the Ordinance exempts purely religious activities from the requirements of many other sections, is misleading and fallacious because it ignores other provisions which permit city officials to classify his activities as charitable and subject him to all of the exactions of which complaint has been made; also said theory disregards the allegations of the petition by which it is averred that he has been charged and had been subjected to two trials and was about to be tried a third time on charges of having violated certain Ordinance provisions from which (if his allegation that his activities are purely religious are taken as true), he is exempted under the provision which respondent relies on to complete the thesis attempting to show that Murdock has not been injured.

Appellee Misstates Appellants' Grounds of Complaint.

The Statement Against Jurisdiction avers:

> "Appellants' chief complaint appears to be of two kinds:
>
> (1) Possibility of delay in issuing identification cards, and (2) possibility of discrimination."

To be charitable let us say that appellee's counsel shows lack of familiarity with the record.

Some of the chief complaints made, which the Jurisdictional Statement clearly reveals, are:

(a) *Certainty* of long, unreasonable and unnecessary delays in issuing identification cards (because the Ordinance requires them unless arbitrarily waived by designated officials) and possibility that the applicant for a permit (identification card) will never be granted one, depending on the whimsy of Commissioners.

(b) Discrimination, made possible by certain provisions directly involved in this proceeding, which permit the exemption of charitable organizations by City Commissioners with no rule or standard to govern their action.

(c) That the entire Ordinance, section by section, constitutes a planned procedure to eliminate all organizations and individuals except the favored few from doing charitable or religious-charitable work in the City of Los Angeles.

At least a half dozen other "chief" complaints have been registered and denied directly or implicitly by the State Supreme Court, as appellants expect to show in their brief.

Appellee's Statement Concerning the Issues in Ex Parte Darte, 172 Cal. 47, Is Misleading.

The rule made by the Los Angeles City Commission under which the Salvation Army was required to deed its property to a city board, to secure a permit, was only indirectly involved in the *Darte* case, just as numerous sections of the instant Ordinance are involved herein.

There the criminal complaint charged violation with soliciting and selling donated goods without a permit only, but the Court considered and held invalid other provisions and rules which impeded securing a permit. A similar situation exists herein.

Indeed, except for the one rule mentioned by appellee, the other invalid provision in *Ex Parte Darte* are paralleled by provisions of the instant Ordinance in the guise of other language.

Appellee states that the *Amicus Curiae* Brief "filed in this case" was "for and on behalf of not only the Salvation Army, but also thirteen other named organizations, a majority of which are religious organizations."

In reply to this irrelevant assertion which is also made, in substance, in said brief, appellants feels that it is pardonable to say, as they did in replying to that brief, that the records of the City of Los Angeles show that these organizations are all on the selected and favored list who have been arbitrarily relieved and exempted from the time-consuming, burdensome and prohibitive prior restraints under which others, including appellants, are held, and which appellants challenge as unconstitutional.

Appellants assert and promise that in their brief to be filed herein in due course it will be shown that no section

of the Ordinance involved has been fairly reviewed in the Statement Against Jurisdiction. In fact the two dissenting opinions of the State Supreme Court set forth in the appendix to the Jurisdictional Statement analyze most of them judicially and demonstrate the truth of this assertion.

Conclusion.

Appellee's counsel correct the Jurisdictional Statement in respect to the title of the Los Angeles City Ordinance involved herein and say that it consists of a six line paragraph which he quotes and that it is erroneous to give the title as "charities."

The correction will not be seriously disputed but, curiously, the exhibit attached to the Statement Against Jurisdiction is entitled "charities" and purports to be "Ord. No. 77,000" as the Jurisdiction Statement describes it, counsel for appellants having copied said title and description from a like exhibit in one of the appellee's briefs filed in the State Courts.

Appellants feel assured that nothing contained in the opposition statement warrants the contention not too strongly made therein that this Court should decline jurisdiction.

Respectfully submitted,

ROBERT H. WALLIS,
Attorney for Appellants.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 574.

THE RESCUE ARMY, a corporation and CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES,

Appellee.

OPENING BRIEF, STATEMENT OF JURISDICTIONAL GROUNDS AND ERRORS TO BE URGED.

ROBERT H. WALLIS,
328 American Avenue, Long Beach,
Attorney for Appellants.

Parker & Company, Law Printers, Los Angeles. Phone TR. 8284.

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THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES,

Appellee.

OPENING BRIEF, STATEMENT OF JURISDICTIONAL GROUNDS AND ERRORS TO BE URGED.

The case involves the validity of an Ordinance No. 77,000, entitled "Charities and Relief," incorporated in the Municipal Code of the City of Los Angeles as Sections 44.01 and 44.19, inclusive, and 24.01 thereof against plaintiff's challenge that the same violate all guarantees of the Fourteenth Amendment to the Federal Constitution.

The State Supreme Court upheld the constitutionality of the ordinance as against appellants' claims to the contrary, which claims were: That certain provisions of the ordinance on their face and as applied to appellants deprive them of property without due process of law and are unreasonable, arbitrary and unduly burdensome; that other provisions are arbitrarily discriminatory and deny appel-

lant, and all others similarly situated, the equal protection of said law, in violation of said Fourteenth Amendment to the Federal Constitution; that the ordinance violates the Fourteenth Amendment to said Constitution, in that it creates and constitutes prohibited prior restraints upon the exercise of the right of freedom of religion; that said ordinance unreasonably and arbitrarily classifies the religious activity of soliciting donations of money and goods by religious organizations for their religious activities, as charitable and not religious if any portion thereof is to be dispensed as charity, and it arbitrarily and unreasonably classifies as a promoter any solicitor for a religious organization who receives any compensation for his services and subjects him to many onerous, time-consuming burdens, such as paying a heavy license fee and posting a bond in the sum of $2000.00, not required of other solicitors, thus infringing the rights of freedom of religions, the equal protection of the laws and it takes property without due process of law; that said ordinance penalizes all violations of its provisions and thus violates the rights of personal liberty and religious freedom;

That it delegates to administrative officers the power to arbitrarily refuse to grant a permit or license to solicit to any applicant; and delegates to such officers arbitrary power to endorse and thereby exempt charitable organizations and their solicitors from all of many burdensome, time-consuming requirements of the Ordinance to which appellant and other similar organizations and their solicitors are subjected; that as to such delegations of power and several others of like import no standard is provided to govern such administrative officers in making determinations, and are thus violative of the due process and

equal protection of the law clauses of said Fourteenth Amendment;

That said Ordinance is, and many of its provisions are, unreasonable, unnecessarily burdensome, even if solicitation for charity could be classed as secular, and is thus violative of said due process clause;

In each of the foregoing holdings, the decision of said State Supreme Court denied contentions of appellants to the contrary and decided that such contentions possessed no merit, and appellants, in their petition for rehearing, claimed and now assert that in so holding the decision of said State Court itself has denied to appellants the equal protection of the laws, the right to exercise religious freedom and the right to acquire, possess and dispose of property as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Appellants have claimed and now contend that the sections and provisions of the Ordinance involved, including 44.09 and 44.12 are so related and interdependent that they form a void and unconstitutional plan whose validity must be considered and determined in order that complete or substantial relief be rendered.

The State Court of Last Resort, the Supreme Court of the State of California, affirmed the judgment and decree of the trial court, after denial without opinion of plaintiff's petition by the District Court of Appeal of said State and said Supreme Court held and adjudged that said Sections 44.09 and 44.12 of the Ordinance 77,000 of said City of Los Angeles, and certain other closely related sections of said ordinances are each constitutional and valid and are not violative of the Fourteenth Amendment to the Federal Constitution upon any of the grounds asserted by

petitioners; and in upholding the validity of Section 44.12, which expressly requires every solicitor to "in all respects comply with the provisions of this Article" said decision and judgment upheld the constitutionality of said Ordinance (Article 4, Section 4 of the Ordinance involved), as an entity and each provision thereof as against all challenges on constitutional grounds presented by petitioners.

Concise Statement of the Case.

The action involved was commenced in said District Court of Appeal by the Rescue Army and Charles T. Murdock by a Petition for a Writ of Prohibition to restrain the Municipal Court of the City of Los Angeles from proceeding to try petitioner Murdock for alleged violations of Sections 44.09 and 44.12 of Ordinance Number 77,000 of said City. The respondent court was about to try said cause for the third time, a conviction having been had in each of two previous trials, which in each instance, had been reversed on appeal by the Superior Court of California in and for the County of Los Angeles.

The complaint or petition for said Writ relates the previous trials, convictions and reversals and avers that the Rescue Army is a non-profit incorporated religious organization, of which Murdock is an officer whose official duties occupy his full time, and that one of said duties is soliciting funds from the public to be used in its religious activities, including its charities [T. R. pp. 1, 2]; it is further averred that said Ordinance and Sections 44.09 and 44.12 and other sections thereof are, separately and as a whole, violative of the right of religious freedom of petitioners and of all religious organizations similarly

situated, both on their face, and as construed and applied by said city and by its Department of Social Service, and the Commissioners and Secretary thereof in that said Ordinance and sections create and constitute numerous prior restraints upon the exercise of said right, as guaranteed by the Fourteenth and the First Amendments to the Federal Constitution.

Said petition alleged that "said Sections 44.09 and 44.12 are not, and neither of them is, severable from other sections of said Ordinance, or from the whole body thereof, but are dependent upon and interdependent with other sections of said Ordinance, and derive their pretended legality solely from the fact that they are a part of a purported regulatory law enacted in the exercise of governmental power" [T. R. pp. 3, 4], and said petition contains the following averments:

> "That at all times herein mentioned there was and now is in effect in the City of Los Angeles an ordinance, entitled the 'Charities and Relief' Ordinance, numbered 77,000, a copy of which said ordinance is attached hereto, and made a part of this petition by reference, which said Ordinance purports to and by its provisions does prohibit the exercise of the right of religious freedom by church and other religious organizations through the solicitation of money, or anything of value, or by the sale thereof, for religious purposes except upon the payment of a license tax or fee to said city, and the issuance of a license or permit by said city to so solicit; that said ordinance forbids and penalizes said solicitations by a class of solicitors which it designates as 'Promoters' unless and until said 'Promoters' shall have paid to said city a license tax or fee of $25.00 and have posted a bond in the sum of $2,000.00, and said ordi-

nance likewise requires of another class of solicitors a payment of a license tax or fee and the posting of a bond in the sum of $500.00 with the Board of Social Service Commissioners of said City, and said ordinance further forbids any 'promoter' or other 'solicitor' to solicit without having first obtained a permit or license so to do from the said city, . . ." [T. R. p. 3.]

"That section 44.16 of said Ordinance purports to exempt from the requirements of the payment of said license taxes or fees and the posting of said bonds and the obtaining of said licenses or permits those solicitors whose solicitations are 'purely' for 'evangelical, missionary or religious purposes'; but petitioners aver that said city and its boards, officers and other agents have at all times herein mentioned construed and applied, and now construe and apply said last named provisions to exclude from said exemption all solicitors who do not entirely donate their services and if any portion, however small, of the collections made by said solicitors are to be or are used for charity even though such charity is an essential activity and an integral part of a missionary, evangelical or religious activity of a church or other religious organization, petitioners aver that each, every and all of the provisions described in this paragraph and in paragraph V of this petition is and they all constitute a prior restraint upon the exercise of the right of religion and as such violate Amendments One and Fourteen of the Constitution of the United States.

That said Ordinance as construed and applied by said city, its officers, boards and other agents, classifies all religious activities of churches, religious associations and other religious organizations as charities

and as being for charitable purposes, and thereby subjects said religious organizations to all of the said licensing and permit requirements of said ordinance; that said ordinance provides that said city, through its Department of Social Service may 'approve' such 'charitable associations' as it deems are entitled to such approval and thereby exempt them and their promoters and solicitors from the provisions of said ordinance hereinbefore described and from the necessities of time-consuming delays in investigations and other procedural requirements of said ordinance, and said ordinance, section 44.09 thereof, provides that said Board of Social Service Commissioners may 'express written permission' allow any person to solicit contributions by means of a box or receptacle, upon any street, sidewalk or way, or in any public park, or in any publicly owned or controlled place, although without such 'express written permission,' all persons are forbidden by said section to so solicit as aforesaid." [T. R. pp. 3, 4.]

"Petitioners aver that said last described provision of said section 44.09 and of said provision authorizing said Department of Social Service to approve such charitable association as it deems entitled thereto, arbitrarily grants and permits to be granted privileges and immunities to a portion of a class while denying the same to others and that said provisions authorize the granting of special privileges to certain persons which are not given to others similarly situated, and are thus violative of Article I, section 21 of the Constitution of California and of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution." [T. R. p.].

The defendant court, represented by the City Attorney of said city, filed an answer and also demurred to the petition generally and upon numerous specific grounds and filed "Points and Authorities" containing such argument as to be a brief, in support of the demurrer, in which it is contended among other matters, that the ordinance "constitutes a valid exercise of the police power." "A means of registration of persons engaged in soliciting donations, . . ."; that it "does not confer power, arbitrary or otherwise, upon the Board to deny to anyone the right to solicit for charitable purposes"; that "In so far as it confers power on the Board to waive compliance with certain regulations, such action must be taken in the exercise of a wise discretion"; that "if the exception found in Section 44.16 of the Los Angeles Municipal Code be considered as establishing a religious test and for that reason invalid, such fact does not invalidate the remainder of the Ordinance" and "the Ordinance as thus construed would still come within the limits of control of religious organizations as outlined in the various decisions of the United States Supreme Court." [T. R. pp. 46-50.]

Said argument on behalf of the Municipal Court declares that Sections 44.01 and 44.15 are "regulatory in their nature"; that although nothing in the Ordinance authorizes "the Board to issue or deny a permit to solicit," a refusal "to issue such cards (permits) would be overcome by a Writ of Mandate," and it is asserted that the provisions of Section XVIII pertaining to "promoters" (one class of solicitors) are not shown by the petition to be applicable to either of the plaintiffs, but that such provisions do not "infringe upon religious liberty." [T. R. pp. 45, 49, 50.]

The answer admits the allegations of the petition concerning the prior trials of the criminal case involved and that the said City and its City Attorney and the Municipal Court will proceed to try the case again unless restrained by the process sought; that the City of Los Angeles and its City Attorney claim the right to compel plaintiffs to obey all of the provisions of the Ordinance involved and have threatened to arrest Murdock and all other solicitors of the Rescue Army who solicit contributions of any kind for it, or who otherwise violate provisions of said Ordinance. [T. R. p. 36.]

The answer denies that the Ordinance prohibits the exercise of the right of freedom of religion by religious organizations, except upon payment of a license tax or fee and the issuance of a license or permit by said city; denies that said ordinance requires that the class of solicitors called "promoters" are required to pay a license fee of $25.00 and post a bond of $2,000.00 and to secure a license to be permitted to solicit in the City of Los Angeles; denies that as construed and applied by said City and its Boards and officers, Section 44.16 of the Ordinance and any of the Sections which require of solicitors or promoters a fee or a license tax or furnishing a bond and securing a permit or a license to solicit for religious organizations, constitute prior restraints upon the exercise of the right of religious freedom or violate Amendments One or Fourteen of the Constitution of the United States, and, generally, said Answer denies each and all of the averments of the complaint by which a particular section, or the Ordinance as a whole, are challenged by the petition as violations of the said Fourteenth Amendment or any

of its clauses; the answer also alleges that Sections 44.02 to 44.15 of the Ordinance involved "do not apply to persons who solicit donations which are to be used solely for religious, missionary or evangelical purposes." [T. R. pp. 35, 36.]

The State District Court of Appeal denied the petition without an opinion. [T. R. p. 51.]

Issues as Viewed and Contested on Appeal.

While the petition for the Writ of Prohibition filed by the Rescue Army and Murdock was before the State Supreme Court, the Los Angeles City Attorney, representing the respondent Court, filed a "Demurrer" to the petition and "Points and Authorities," under which latter caption a short brief was written. It begins by stating:

> "The only issues presented by the alternative Writ in the case appears to be whether the Ordinance involved is in contravention of:
>
> (1) XXX
>
> (2) The Fourteenth Amendment to the Federal Constitution." [T. R. pp. 37, 38.]

Thereafter, said short brief attempts to defend Sections 44.01, 44.02, 44.03, 44.05, 44.06, 44.15, 44.16 and 44.18, separately and concludes by arguing that

> "(2) The ordinance constitutes a valid exercise of the police power. It constitutes a means or registration of persons engaged in soliciting donations, and prescribes reasonable regulations governing the conduct of solicitations."

"(3) The ordinance does not confer power, arbitrary or otherwise, upon the Board to deny anyone the right to solicit for charitable purposes, and contends that if Section 44.16 were to be held invalid as establishing a religious test this would not invalidate the remainder of the Ordinance." (Res. Dem. and Pts. and Authorities, pp. 13-20. [T. R. p. 39.]

Petitioners filed a Reply to the foregoing argument in which as to the assertions above mentioned that the Ordinance does not confer power "arbitrary or otherwise" on the Board, and other contentions made in said respondent's brief, it was claimed that said sections must be construed as the petition alleges and in that behalf points out other interrelated sections of said Ordinance which, it is argued, infringe the equal protection of the laws clause of said Fourteenth Amendment, to-wit, Section 44.03, subdivision 2, which authorizes the Board to arbitrarily endorse certain associations, denominated "any social service agency" and to render it scot free of the prior restraints imposed upon all others similarly situated, among the restraints named being compulsion of applying for a permit or license, submitting to unlimited investigations and exhibiting or reading voluminous information cards to those solicited; also the definition of the term "promoter" in Section 44.01 is claimed to create an arbitrary, oppressive and unreasonable class discrimination in that it makes all solicitors subject to classification as promoters by the Board and at the same time empowers the Board to re-

lieve, without restrictive standards, the promoter of an "endorsed" social service agency, of all provisions applicable to other promoters, among which are paying a license fee of $25.00 to solicit and posting of a bond of $2,000. (Jur. Stat. pp. 33-36.]

Petitioners also point out that under said Ordinance, Charles T. Murdock is a promoter as well as a solicitor and is subject to said discriminatory provisions of Section 44.01, and finally said Reply to respondent's answer and brief contends that said city has no power to make any solicitation for a religious purpose or for charity as does Section 44.16 by limiting to "purely evangelical missionary and religious purposes," solicitations which are exempt from the provisions of the Ordinance.

The decisions in *Murdock v. Pennsylvania*, 87 L. Ed. 1292, and *Cantwell v. Connecticut*, 310 U. S. 295, 84 L. Ed. 1213, were relied upon as precedents for holding that the instant ordinance does not establish a mere "registration system" or "identification" safeguard, but is, as a whole, violative of the right to freedom of religion and the equal protection of the laws and void, under the said Fourteenth Amendment. (Jur. Stat. pp. 36-38.)

That the State Supreme Court considered the petition for the Writ of Prohibition as a challenge to the validity of the entire City Ordinance involved is shown by the majority and the dissenting opinions. [28 A. C. 475; T. R. pp. 51-74.]

In the "Statement of Jurisdiction" herein, the above assertion is supported by a concise analysis of salient portions of said opinions. (Stat. of Jur. pp. 29-34.)

It should be especially pointed out that the majority opinion refers to the Court's opinion in *Gospel Army v. City of Los Angeles*, 27 A. C. 248, as giving the grounds upon which, in the instant case, it holds the Ordinance, and the sections thereof herein challenged, as unconstitutional, to be valid and constitutional. [T. R. p. 59.]

Reference to the opinion in *Gaspel Army v. City of Los Angeles*, 27 A. C. 246, shows that the opinion therein considered, construed and passed upon Sections 44.01 to 44.18, inclusive, together, and held that none of them were subject to attack upon the constitutional grounds assigned by the Gospel Army, although special consideration was given to certain sections. These comprise all of the Ordinance except Sections 44.19 relative to "Promoters" and 24.01 regulating Pawn Brokers and Junk Dealers. The opinion in that case does not maintain by number all of the sections in the group 44.01 to 44.18, and among those not so mentioned is 44.09. (27 A. C. 248-253.) Thus, by adopting the first portion of the Gospel Army opinion, the instant opinion upholds as constitutional all of said group of sections. (27 A. C. pp. 248-253.)

Errors Intended to Be Urged.

It is appellants' intention to urge each of the errors set forth in the "Transcript of Record." However, being uncertain as to whether this statement, alone, complies with Rule 27, said assignment, abbreviated where possible, is repeated.

The California Supreme Court in its opinion, decision and judgment in this case, held concerning the validity of the Ordinance involved or sections thereof as hereinafter stated, and thereby erred and violated guarantees of the 14th Amendment to the Federal Constitution, as follows:

I.

The Supreme Court of the State of California erred in its opinion, decision and judgment in the case of *The Rescue Army v. Municipal Court of the City of Los Angeles* in implicitly holding (and in failing to hold to the contrary although the issue was duly presented in the petition and petitioners' briefs) that the "Charities and Relief" ordinance of said city is a valid exercise of the police power and is not, as applied to religious organizations, and especially to said Rescue Army and Charles T. Murdock, violative of the right to exercise freedom of religion, guaranteed by the Fourteenth Amendment to the Federal Constitution, and that it does not arbitrarily and unreasonably, and by its mere fiat, segregate all religious-charitable activities of such organization, from the missionary, evangelical and religious activities of such organization, and that it does not impose upon all religious-charitable activities of such organizations unreasonable, burdensome and time-consuming prior restraints, and that its provisions do not delegate to an

administrative board and its agents power to deny such organizations the exercise of religious freedom without legislative standards to control their decision.

The Supreme Court of the State of California, by its opinion, decision and judgment, erred in holding that Section 44.09(b) [T. R. p. 16], of said Charities and Relief Ordinance of said City of Los Angeles (being Chapter 4, Article 4 of the Municipal Code thereof) is reasonable, valid and constitutional and that it does not violate any clause of the Fourteenth Amendment to the Constitution of the United States, and said opinion, decision and judgment erred in that said Court therein and thereby failed and refused to decide and hold that said section infringes the privileges and immunities, the equal protection of the laws and the due process clauses of said Constitution, in that said section requires that any person who solicits any contribution for any charitable purpose in the public places specified therein, to comply with *all of the other sections of said ordinance*, among which other sections are provisions clearly violative of every guarantee and clause in said Fourteenth Amendment, many of which violations and provisions will be identified and specified in succeeding assignments of error herein.

II.

Said opinion and decision errs in construing said ordinance in that it enacts by judicial legislation a provision not written into any section thereof by the law, reading in substance as follows: The Department is without authority to withhold such information cards when the required information has been filed and payment of four cents for each information card has been made; and said opinion and decision, based in part on such extrane-

ous provision, thereby violates the due process clause of said Fourteenth Amendment and the right of freedom of religion and the exercise thereof by petitioners.

III.

Said opinion and decision errs in construing Section 44.09 of said ordinance in that it adds, by unwarranted judicial legislation, the following provision:

> "The denial of a permit is warranted only if the information furnished the board disclosed fraud, or if the solicitation as planned would interfere with public convenience and safety,"

and said judicial legislation and the opinion and decision based thereon, to-wit that said section, construed as containing said added provision, is a reasonable and valid regulation, is non-discriminatory and does not invade the liberties protected by the Fourteenth Amendment to the Federal Constitution, constitutes an infringement of the right of freedom of religion and a violation of due process of law guaranteed by said Fourteenth Amendment; and it is further assigned as error and as violative of said constitutional provisions in that said Court failed and refused to hold that said section, without or with said added provision, is unreasonable, that it empowers said board to arbitrarily and capriciously and without guide or standard deny permission to solicit for charitable or religious organizations and to discriminate between applicants for permits and between the causes for which solicitations are planned, in violation of all clauses and provisions of said Fourteenth Amendment.

IV.

Appellant will argue that the said Supreme Court erred in its opinion, decision and judgment in holding, by referring to said opinion *The Gospel Army* case, that the provisions of said Section 44.02 of said ordinance [T. R. p. 12], which authorize said board to "recall every such information card and amend or correct the same" and require the person who files it, or association on whose behalf the Notice of Intention was filed, to return said card and to present the recalled information card within 48 hours after receiving notice to return it, are reasonable and valid and not burdensome, and said Supreme Court erred in failing and refusing to hold that said provisions are unreasonably time-consuming and burdensome and infringe the rights of solicitors of donations and associations on whose behalf such solicitations are made to the exercise of the right of freedom of religion and constitute prior restraints upon the exercise of such rights, and of the right to engage in charitable activities, as guaranteed by the Fourteenth Amendment to the Federal Constitution, and in holding that Section 44.02 of said ordinance is reasonable and not burdensome, and is valid in empowering the board to publish the results of investigations by the department pertaining to applications for permits to "solicit" and the allegations of the Notice of Intention and to give publicity to any such results by such means as may be deemed best to reach the general public, and persons interested, and said opinion, decision and judgment erred in failing and refusing to hold that said provisions permit unreasonable delays and constitute prohibitive burdens upon the exercise of religious and charitable activities and the freedom of religion and the right to be charitable, in contravention of the due process clause of the Federal Constitution.

V.

The said Supreme Court erred in its opinion, decision and judgment in said case in holding valid and constitutional the provision in Section 44.03 of said ordinance [T. R. p. 13], which provides that in issuing an information card (permit to solicit) said department has power to show in said card that such issuance is "not an endorsement" or to state that "they endorse such charitable association," and said Supreme Court erred in failing and refusing to hold that said provision is a nullity on the ground that it delegates to the department power to endorse or refuse to endorse, arbitrarily and capriciously, since no reasonable standard is provided to guide and control its decision, thus violating the due process clause of the Federal Constitution: also on the ground that said enactment creates two classes of permits and of charitable associations, the endorsed and the unendorsed, and arbitrarily and unreasonably denies to the latter the privileges and protection which it grants to the former, in violation of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution.

Also, appellant will contend that said Court erred in holding valid and constitutional the provisions of said ordinance in Section 44.03 thereof, which provides that upon the filing of a Notice of Intention (petition for permit) to solicit with said department, before acting on said petition, said department is authorized to investigate the allegations of said petition, or Notice of Intention, and to "have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is to be made," and said Supreme Court so erred, as aforesaid, in failing and refusing to hold that each and all of said actions so author-

ized to be taken by said department are unreasonable and constitute arbitrary and onerous limitations upon the right to solicit for charity, and are prior restraints upon the exercise of the right of freedom of religion, and contravene the Fourteenth Amendment to the Federal Constitution upon both of these grounds.

VI.

Said Supreme Court erred in its opinion, decision and judgment in said case in holding valid the provision in Section 44.03 of said ordinance which authorizes the said department, in issuing to an applicant for a permit to solicit, called therein an Information Card, to set forth therein information secured by independent investigation concerning the applicant, of which he has not been apprized or had opportunity to refute or explain which "in the opinion of the Board" shall be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made," and said Court erred in its opinion, decision and judgment in failing and refusing to hold that said provision is not void and does not violate the due process clause of the Federal Constitution for each of the following reasons:

1. That it empowers the defendants Board and Department to deprive the applicant of a property right and property without due process of law;

2. It provides no guide or standard by which said Board and said Department shall determine what information will be of assistance to the public to determine the nature and worthiness of the charitable purpose for which the solicitation is to be made;

3. It constitutes an unreasonable and burdensome previous restraint upon the exercise of the right to solicit for charitable purposes;

4. As applied to solicitations which are an integral part and in furtherance of the purely religious activities of a religious organization, and as applied to the Rescue Army and its solicitors and to said Murdock, it constitutes a prohibitive prior restraint upon the exercise of the right of freedom of religion.

VII.

That said Supreme Court erred in holding to be valid, and not violative of the right of religious freedom or of the right to engage in charitable activities the provisions of Section 44.05 of said ordinance [T. R. p. 13], which provide as follows:

> "No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:
>
> "(a) The purpose of the solicitation and use of the contribution to be solicited;
>
> "(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commission or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(k) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

VIII.

The said Supreme Court erred in holding, by referring to the decision in *The Gospel Army* case, adequate and valid, the provision contained in Section 44.06 [T. R. p. 15], of said ordinance, which empowers said Department to decide that a Notice of Intention (petition for permit) "does not disclose sufficient information for the public concerning the facts required by Section 44.05 to be set forth or concerning the person or association making such solicitation or on whose behalf such solicitation is made," and said Supreme Court also erred in failing and refusing to hold that said provision is void and violates the Fourteenth Amendment to the Federal Constitution, in that it empowers the Department to act and decide capriciously and arbitrarily and unreasonably, and provides no basis or standard to control the decision involved in said provision;

And appellant will claim said Supreme Court erred in holding, by referring to said Gospel Army opinion and by upholding Section 44.12 [T. R. p. 15], as valid and violative of no constitutional right, that all of the provisions of Section 44.06 of said ordinance are valid and not burdensome, which provisions require that the applicant for permission to solicit "must file with the Notice of Intention a statement of any agreement made with any agent, solicitor, promoter . . . of such solicitation, together with a copy of each agreement, which may be in writing, and, if a change is made in such agreement, applicant must within twenty-four hours file a true copy of it with the Department, and must, if requested by the Department, provide any further information which the Board may require, and, if required by the Department, the Notice of Inten-

tion and additional information must be signed by the person intending to make such solicitation and by two officers of the association."

Said Court erred in failing and refusing to hold that said provisions are violative of the Fourteenth Amendment to the Federal Constitution and of the right of those who seek to engage in charitable or religious activities, because said provisions each create and constitute a burdensome bar and previous restraint upon the exercise of such persons to freely engage in both or either of said activities.

IX.

That said Supreme Court erred in holding that the provisions of Section 44.12 of said ordinance are reasonable, valid and constitutional and not burdensome, as applied to solicitors for charity, whether the solicitation be for charity alone or for charity in furtherance of religion, which provisions require that all solicitors must read the Information Card to any person solicited for donations or present it to such person and "allow him sufficient opportunity to read the same before accepting any contributions so solicited," and said Supreme Court erred in said opinion and decision in failing and refusing to hold that said provisions are so burdensome as to be prohibitive of solicitations, and are arbitrary and unreasonable prior restraints upon the exercise of the right of freedom of religion, and especially of the exercise of said right by the Rescue Army and all of its solicitors, and of their rights to engage in charitable activities, and, hence, that said provisions contravene the Fourteenth Amendment to the Federal Constitution.

X.

The said Supreme Court erred in holding that the provisions of Section 44.14 [T. R. p. 17], of said ordinance are not burdensome and are reasonable, valid and constitutional, which provisions require that solicitors file with the Department a report to said Department, stating the contributions secured, "in detail, all expenses of or connected with such solicitation," "exactly," for what uses and the manner in which all contributions were disbursed, and that the statement be signed by the persons or association obligated to file the Notice of Intention, and said Supreme Court erred in not holding and in refusing to hold that each of said requirements is burdensome and unreasonable, and a prior restraint upon the freedom of religion of the Rescue Army and its solicitors and creates and constitutes a prohibited prior restraint upon the exercise of the right of religious freedom and the right to be charitable of said parties.

XI.

The said Supreme Court erred in its opinion, decision and judgment, in holding Section 44.09(b) [T. R. p. 16], to be valid. Said opinion holds that the provisions in respect to receipts to be given for donations and the contents thereof contained in Section 44.15 [T. R. p. 18], of said ordinance are not unduly burdensome and violative of the right of freedom of religion, and that they are reasonable, valid and constitutional; said pertinent provisions are:

> "No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind

of the contribution, substantially the following matters:

"(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

"(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

"(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

XII.

Appellant will argue that said Supreme Court erred in holding to be reasonable, valid and constitutional the provision contained in Section 44.16 of said ordinance [T. R. p. 19], which segregates solicitations for charitable purposes from solicitations for evangelical, missionary or religious purposes and severs from the latter class all solicitations whose purposes are not purely evangelistic, missionary or religious, even though they are in furtherance and an integral part of religion and other religious activities, and said Supreme Court, in its opinion, decision and judgment erred in failing and refusing to hold that said provision is arbitrary, unreasonable and discriminatory, in that it attempts by law to remove activities which in fact are religious from the realm of religion and from the protection of the Fourteenth Amendment to the Federal Constitution and its guaranty of freedom of religion; and said Court erred in upholding as valid, constitutional, and not burdensome, unreasonable, or arbitrary, the

provisions of Section 44.16 of said ordinance which authorizes the Board of Social Service Commissioners of said defendant City to investigate the matter of solicitations for solely evangelical, missionary or religious purposes and if "in the opinion of the Board" such solicitation is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts in the case"; and said Court erred in failing and refusing to hold that the last foregoing provision is not a direct violation of the right of freedom of religion and of its exercise, and that it does not permit and create a prior restraint upon and interference with the exercise of said right in violation of said Fourteenth Amendment.

XIII.

That said Court erred in holding that said Section 44.16 does not violate the rights of religious freedom and the right of property, guaranteed by said Fourteenth Amendment, of religious organizations, and especially such rights of the Rescue Army and of its solicitors and solicitor-promoters, in that it excludes from the exemption solicitations of money and goods if any part thereof is to be applied to charities incident to religious activities or to the compensation and support of the solicitor, in that said section of the ordinance provides that solicitations "*made solely for evangelical, missionary or religious purposes*" are exempt from all other provisions of

the ordinance which are challenged herein as violative of petitioners' rights, and by this provision the Rescue Army and any of its solicitors or its solicitor-promoters, who seek donations for charity are thereby also arbitrarily denied the equal protection of the laws under said Fourteenth Amendment, and said Court, erred in holding that said last-named provision does not vest in the Board unbridled power to arbitrarily and partially nullify the efforts of solicitors and promoters for religious purposes and organizations and to thereby infringe the rights of religious freedom and the acquirement of property in violation of said Fourteenth Amendment, of promoters and other solicitors for such organizations and purposes, and especially, such rights of the Rescue Army and of its promoters and other solicitors.

XIV.

Said Supreme Court in this case, erred in holding that provisions in Section 44.19(2)(a), (b) and (c) [T. R. p. 20], and subsection 3, are not burdensome and do not constitute prior restraints, and are reasonable, valid and constitutional. Said provisions are:

> "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without a license from the Board so to do.
>
> "(2) Application.
>
> "To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application the applicant shall set forth, in addition to such information as may be required by the Board:

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the application, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation, that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation;

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter."

Subsection (3) requires the applicant to post a bond in the sum of $2000.00, to insure payment of any "direct pecuniary loss sustained through any theft on the part of the principal."

XV.

That said Supreme Court erred in upholding Section 44.19, subsection (4) [T. R. p. 21], which requires the applicant for a promoter's license to pay a fee of $25.00 to said Board of Social Service Commissioners, and subsection (5) authorizes said Board to make such further investigation of the applicant and of "his affairs" as the "Board may deem advisable," and "if from such examination the Board shall be satisfied that the applicant is of good character

and reputation," has "sufficient financial responsibility to carry out obligations incident to any solicitation such as applicant may make," that his statements in his application "are true," etc., the application shall be granted. "Otherwise, the Board shall refuse to issue the license," and said Supreme Court erred in adjudging that the foregoing provisions are valid and constitutional and are not burdensome but are reasonable as applied to promoter-solicitors for charities and for religious organizations, donations to which are used in furtherance of their religious activities and especially to said Rescue Army and its promoter-solicitor.

XVI.

Said Supreme Court erred in holding that the provision of Section 44.19(3) [T. R. p. 21], which empowers the Board to make such investigation of the applicant and "his affairs" "as they deem advisable" and from such examination to base their determination of his qualifications to be granted a license, is reasonable and not vague in its delegation of powers and standards for their use and it erred in failing and refusing to hold and adjudge that said provision is not violative of due process under the Fourteenth Amendment to the Federal Constitution because it fixes no standard and authorizes said Board to make its decision upon matters wholly irrelevant to the purpose of the inquiry and to discriminate against some and favor others.

XVII.

Subdivision 5 of Section 44.19 [T. R. p. 22], provides that the Board may examine the application and investigate the application and investigate the applicant and his affairs as the Board deems advisable and shall issue a li-

cense "to solicit as a promoter" contributions within said city if the Board is satisfied that the applicant is of good character and reputation and has sufficient financial responsibility to carry out the obligations incident to any solicitation to be made as such promoter, etc., and appellant will argue that said Court erred in holding that said provisions can be made to apply to a solicitor of donations for a religious organization, which donations are to be used and are used in furtherance of the religious activities of said organization, including its charities, without being an infringement of the said Fourteenth Amendment and the right of freedom of religion and the inhibitions therein against prior restraints upon the exercise thereof.

XVIII.

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the provision in Section 44.01 [T. R. p. 10], of said Ordinance which states: "No person who is a *bona fide* paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners of the City of Los Angeles shall be considered a promoter within the meaning of this article" is a reasonable classification and in holding that it is valid and constitutional, since said provision arbitrarily, capriciously and unreasonably exempts employees and officers of endorsed agencies from the necessity of securing permits and licenses to solicit, and from all of the burdensome and time-consuming requirements under which other solicitors and promoters are compelled to solicit, and said Supreme Court erred in holding that said exempting provision is not unreasonably discriminatory and does not deny the equal protection of the laws to charitable organizations not endorsed by said

Board and to their solicitors and promoters, in contravention of the Fourteenth Amendment to the Constitution of the United States.

XIX.

Said Court erred in holding that the definition of the term "promoter" in Section 44.01 of said Ordinance and the provisions contained in Section 44.19 thereof pertaining to promoters, do not create and constitute an arbitrary and unreasonable classification of solicitors, and said Court erred in holding that the classification thus provided is reasonable and the standards provided are adequate, and said Court further erred in failing and refusing to hold that, since no substantial difference exists between said definition of "promoters" and the definition of "solicitors" contained in Section 44.01 of said Ordinance, and since the provisions of Section 44.19 concerning promoters require promoters to obtain a "license" and to pay a substantial fee therefor, and to provide a bond of $2,000.00, and to submit to unrestricted investigation by said Board, and the mandate of Section 44.19 by which promoters must file with said Board "such information as may be required," and to submit to denial of a license upon a mere exercise of the Board's whimsy, whereas said requirements do not apply to "solicitors," said definition and classification of promoters as distinguished from other solicitors is arbitrary and unreasonable and denies to promoters and their assistants the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution.

XX.

Appellant will contend that said Supreme Court erred in holding that certain provisions of Sections 44.03, 44.05, 44.06 [T. R. p. 15], and 44.12 [T. R. p. 17], of said Ordinance collectively and read together, are valid, constitutional and reasonable and are not burdensome as applied to secular or religious organizations and their solicitors and promoters who solicit donations of money and articles of personal property for charitable or religious or secular purposes.

Said Section 44.12 provides that the solicitor shall read his information Card "to the person solicited" or "present to said person for his perusal," and allow him "sufficient opportunity to read the same before accepting any contribution."

Since, pursuant to Sections 44.03, 44.05 and 44.06 of said Ordinance, the contents of said Information Card (permit or license), may be of unlimited volume and must, to comply with said last-named section, be so comprehensive as to render the requirements of Section 44.12 prohibitive of public solicitations of donations for money or personal property to be used in furtherance of religion, said Court erred in its opinion, decision and judgment in failing and refusing to hold that each of said provisions, especially all of them together, create a system of procedure which constitutes an unreasonable, burdensome and prohibitive prior restraint upon the exercise by the Rescue Army and its promoter and other solicitors in the rights of religious freedom and the free exercise thereof, and the right to dispense charity and to acquire, possess and dispose of property, as guaranteed by the Fourteenth Amendment of the Federal Constitution.

ARGUMENT.

Before proceeding to discuss the merits of the appeal, in view of certain assertions and contentions set forth in appellee's "Statement of Matter Making Against Jurisdiction" heretofore filed, brief reference will be made to those which it is not deemed necessary to discuss in appellant's reply to said statement.

Both of the Appellants Have Rights Which Are Involved in This Case.

In appellee's above mentioned Statement, it is erroneously asserted that "only the right of Murdock to solicit money upon the streets and public places of Los Angeles" is involved herein.

Appellants contend that property rights of the Rescue Army are involved and that through the attempted enforcement of an ordinance as against their solicitor which violates his right of religious freedom a substantial part of its financial support is threatened with destruction.

Also, if that portion of the State Supreme Court's decision should be upheld in which purported segregation of charities from religion by said Ordinance is held to be valid, or if other provisions which permit the classification of the activities of its solicitor-promoter as non-religious is validated by this Court, the Rescue Army, a corporation, has the same right that any business organization has to challenge the Ordinance and any of its numerous provisions upon any and all other grounds except that the right of freedom of religion and its exercise is thereby infringed.

For example, the Rescue Army has every right to rest its cause upon the ground that certain provisions empower

officers who administer the Ordinance to arbitrarily discriminate against it, or that the provisions themselves deny it the equal protection of the law, or that the Ordinance and its key sections is an unlawful exercise of the police power, which contentions have heretofore been and are now made.

The following points and authorities support the foregoing contention.

The right to acquire property is included in the language of the Fourteenth Amendment which prohibits the deprivation of property without due process of law.

In *Buchanan v. Warley*, 245 U. S. 60, 62 L. Ed. 149, a law was held void under a law by which a negro who contracts to purchase certain property in effect was precluded from doing so.

The opinion cites *Holden v. Hardy*, 169 U. S. 366, 391, 42 L. Ed. 780, 790, as authority for the proposition that "it is elementary"; that the property right "includes the right to acquire, use, and dispose of it.", and Blackstone is cited to the same effect.

The right to dispose of one's property in a given way or under special conditions necessarily involves the right of another to purchase in the same transaction; and every police regulation by law which renders less profitable the business regulated involves the right to acquire property; and if the regulation is arbitrary and unreasonable, makes it violative of the due process clause.

The right to earn a living is a valuable property right, *Theatrical, etc., Operators, etc.*, 176 Cal. App. 692, 118 N. J. Eq. 11, 97 A. L. R. 594.

The right to sell goods at auction is protected by the Fourteenth Amendment. *Sames Loan Co. v. City of Beaumont*, 49 S. W. (2d) 1089 (Tex. Com. App.).

Also, other rights to do a lawful business are so protected: *Lynch v. U. S.* (Ia.), 292 U. S. 571, 78 L. Ed. 490; *Wilmer v. U. S.*, 292 U. S. 571, 78 L. Ed. 1434.

Hence a solicitor for charity who receives compensation has a property right as well as the employer for whose activities he solicits under an employment agreement.

It seems that opposing counsel have failed to probe the depth and to measure the scope of the opinions of the State Supreme Court, or they would not advance so narrow a view of the issues to be decided.

Irrelevant Matter and New Evidence.

Since the case of *Gospel Army v. City of Los Angeles* and the instant proceeding have been linked together by the opinion and decision of the State Supreme Court in this case, and both appeals involve attacks upon the same city ordinance upon ground which in general are common to both, appellants herein desire to point out that appellee's recently filed brief, filed in this Court, in the *Gospel Army* matter, appears to view the hearing in this Court as a specie of trial *de novo*.

On page 2 is set forth purported unsworn statements of evidence concerning the records in the Los Angeles County Clerk's office, upon which an argument is predicated.

On pages 5 and 6 of said appellee's brief is set forth what appears to be an alleged tracing of the ancestry of the ordinance herein involved, the verity of which is nowhere shown in the record of either the *Gospel Army* or the *Rescue Army* as such records now exist.

On page 13, purported records concerning the case of *Ex parte Darte* are referred to and appear in the appendix, of said brief, including an alleged record of a resolution and an order of a city commission.

If it be true as appellees in the *Gospel Army* case aver that the Los Angeles City Charities Commission made an order which "gave rise to *Darte* case," doubtless a similar resolution was passed and order was made out of which the charges against Murdock arose and were tried and retried as the record shows. The record of such order and resolution might well have been recited in the Petition for the Writ of Prohibition in this case, but since it was not set forth therein, appellant's counsel could not properly call that record to this Court's attention even through a sworn affidavit,—much less by way of assertions in a brief.

On page 39 and by "Exhibit B" in the appendix to said brief, wholly irrelevant matters, as far as either appealed case is concerned are injected as new matter and arguments are based thereon, and on pages 40 and 41, more unsworn testimony as to alleged records and matters claimed to be shown appear.

Appellants, the Rescue Army and Charles T. Murdock feel disturbed by the foregoing irregular proceedings by some or all of which counsel who appear for appellees in both cases seek to have the ordinance whose proper interpretation vitally concerns them, construed.

They, therefore, protest against the same being given consideration for any purpose in either appeal, since the same ordinance could hardly be construed differently as affecting appellants herein than in its relation to the Gospel Army case.

Appellants believe that the entire argument on the merits of the issues presented to this Court for decision contained in appellee's "Statement of Matters Making Against Jurisdiction" beginning with "A," page 12, should be stricken, because the same belongs, if anywhere, in the brief for which the rules of this Court provide.

To Uphold the Instant Ordinance the State Supreme Court Has Enacted Law by Judicial Legislation.

The Supreme Court of California has, as the dissenting opinion of Justice Carter asserts, found it necessary to indulge in judicial legislation, in order to save certain provisions of the ordinance from unconstitutionality.

In *People v. Mehra*, 73 Cal. App. 162, page 180, in holding that the words, "same offense", does not mean "same act" or "same transaction," relative to their significance concerning a plea of former jeopardy predicated upon the constitution of California, Justice Plummer forcefully condemned judicial legislation. He said:

> "Courts too frequently fall into the very common error of assuming to interpret everything in the line of legal language. The utter folly and wholesale abuse of construing words that need no interpretation has led to much of the judicial confusion and most of the irreconcilable diversity of court decisions. There can be no stability about law until there is certainty about law, and when the constitution maker or statute maker uses a plain phrase, a simple sentence or a workaday word with a clear, simple and understandable meaning, it is almost criminal in a court to scramble what is simple and confuse what is clear, under the mask of its right to construct."

In varying degrees, this fault is all too prevalent, although it can hardly be likened to criminality, but the obligation of courts to presume that laws are constitutional can easily be magnified to the point of the neglect of a most important judicial function with the never-failing consequence that the protection of fundamental constitutional safeguards which are far more sacred than any law, becomes a lost cause.

It seems that the majority opinion in this case has been swayed by overzeal in an attempt to find a way by which the law may be construed as constitutional.

The majority opinion in the *Gospel Army* decision asserts:

> "The Information Cards, which are in effect permits to solicit, are issued automatically upon the filing of the required information and the payment of the four cents for each card. The department is given no authority to withhold such cards when these requirements are met, and we cannot assume that it will abuse its authority in order to withhold them."

This is purely judicial legislation. Justice Edmonds' dissenting opinion correctly declared:

> "Moreover, the information card which allows one to solicit, providing he presents it to the person who is approached for a donation, 'allowing him sufficient opportunity to read the same, before accepting any contribution. . . .' (Sec. 44.12), is not issued as of course upon the filing of the notice of intention. There is neither requirement nor even suggestion in the ordinance to support Mr. Justice Traynor's assertion that these cards, 'which are in effect permits to solicit, are issued automatically upon the filing of the

required information and the payment of the 4c for each card.' On the contrary, the Department of Social Service shall have the power: '(a) To investigate the allegations of the Notice of Intention, or any statement or reports; (b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made; (c) To investigate at any time the methods of making or conducting any such solicitation. . . . (Sec. 44.03)).'' (27 Cal. (2d) p. 280.)

Of course the Information Cards are not issued automatically, and since the department is expressly empowered to investigate, request further information, etc., etc., *without limit*, and the ordinance contains no provision requiring that upon compliance with designated conditions, the Department shall issue the permit, it necessarily follows that the ordinance, as written and enacted, permits said department to entirely and forever fail to do so, *without abuse of its authority*.

Justice Carter conclusively shows judicial legislation in the Rescue Army majority decision and opinion. This instance concerns the interpretation of ordinance Section 44.09.

Justice Carter quotes the section, which reads:

"Section 44.09. (As amended by Ordinance No. 84,121, approved Feb. 5, 1941.) Solicitation—Boxes—Receptacles:

(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place,

except by the express written permission of the Board.

(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a 'notice of intention' as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article."

Then Justice Carter states:

"The fact that solicitation may be made under section 44.09(a) by express permission of the public officials does not save it. Where a statute is void on its face, such as is true of subdivision (a), the mere fact that an official may give consent to the conduct does not cure it when, as far as appears the discretion of the official is uncontrolled—is guided by no valid signposts and he may act arbitrarily. Nor need a permit be sought under such circumstances as a prerequisite to raising the constitutional question. (See Cantwell v. Connecticut, 310 U. S. 296; Schneider v. State, 308 U. S. 147; Hague v. C. I. O., 307 U. S. 496; Lovell v. Griffin, 303 U. S. 444; Smith v. Cahoon, 283 U. S. 553; *cf.* Cox v. New Hampshire, 312 U. S. 569, 577-578.)" [Tr. pp. 70, 71.]

Again he says:

"The only answer offered by the majority opinion to the lack of a standard for the issuance of permits

is that as a test for the denial of permits there must be either fraud or an interference with the public safety or convenience. There is no mention whatsoever of those tests in section 44.09(a). The board is given unlimited power in passing upon application for a permit. The majority opinion by judicial legislation places those standards in the ordinance. This attempt to unearth vague and uncertain standards *cannot stand in the face of this court's decision in In re Porterfield*, 28 A. C. 102." [T. R. p. 72.]

Section 44.09 of the Instant Ordinance Is Unconstitutional and Void.

Section 44.09 is unconstitutional and void upon each of the grounds which have been assigned as to the ordinance as a whole.

As the Rescue Army majority opinion states, this section was not given "specific" attention in the Gospel Army case opinion. It was held constitutional, however, as one of the group of sections which were considered reasonable, not burdensome or arbitrary. [T. R. p. 64.]

Subdivision (a) of the section provides:

> "No person shall solicit *any* contribution for *any purpose* by means of any box or receptacle, upon any public street, sidewalk, or way, or in any public park or in any publicly owned or controlled place, except by express written permission of the Board." (Emphasis added.) [T. R. p. 16.]

It seems that from the plain, simple language of the provision, complete within itself, and exceptional among the sections of this ordinance in that it makes *no* reference to any other provision therein.

The majority opinion find in it excellent and definite standards, namely, that no application for a permit may be denied unless the use of such permit would create traffic dangers or become a fraud or deception upon the public, in which case, only, a permit might be refused: [T. R. pp. 6, 7, 64, 65.]

This theory is most convincingly negatived by the Dissenting Opinion of Justice Carter in which the conclusion of the majority opinion is termed "judicial legislation." [T. R. p. 72.] He also holds that the section violates the guarantee of the 14th amendment as to due process and freedom of religion. [T. R. pp. 65, 66.]

Certain it is that the language of the provisions on it is too plain to require construction if any words in the English language have attained that quality and degree of perfection.

Violation of Section 44.09 is one of the offenses which were charged against Murdock in the instant complaint the trial of which charge was sought to be prohibited by the petition for the writ. [T. R. p. 59.]

The legislative function of establishing standards by which administrative officers shall enforce laws which it is their duty to administer cannot be delegated to such officers.

Schecter v. U. S., 295, U. S. 404, 79 L. Ed. 1570;

Pomama Ref. Co. v. U. S., 293 U. S. 388, 79 L. Ed. 449;

Yickwo v. Hopkins, 118 U. S. 356.

The majority opinion disposes of appellant's contention that the ordinance is being unconstitutionally applied as to them by saying that the Answer denies the allegations.

of the Complaint to that effect, and that the issue thus presented cannot be determined in this proceeding. [T. R. p. 66.]

However, the State Supreme Court overlooked the admission in the Answer of the truth of the allegations concerning the criminal charges contained in the complaint filed by the City Attorney and the prior trials of said charges. [T. R. p. 59.]

The majority opinion, itself, recites these facts as one consideration warranting the issuance of the alternative Writ, and justifying jurisdiction of the Court; to entertain and determine the issues presented by the petition. [T. R. p. 66.]

It seems, therefore, impossible to say, that is to do so judicially, that the Sections 44.09 and 44.12, have not been construed and applied as alleged in the petition and as contended before the State Supreme Court.

Section 44.12 of the Instant Ordinance Is Unconstitutional.

Appellant Murdock was specifically charged with having violated Section 44.12 by soliciting a donation without exhibiting an Information Card. [T. R. p. 16.]

This is the key provision of the entire ordinance. The tentacles of this section reach forward and backward and grasp every other section, even the Second-hand Store regulations because the woman who conducts it, Mrs. Colbert, is classed by the board as a promoter.

To secure the Information Card, a Notice of Intention must have been filed. [Sec. 44.05; T. R. p. 14.]

The Notice of Intention must provide information on nine matters, of which the dissenting opinion of Justice Carter states: "But a glance at this section shows that the much maligned income tax forms issued by the Federal Government are no more complex and demanding than is this Notice of Intention in its requirements of itemized data." [Gospel Army, T. R. p. 109.] He has analyzed these requirements and reference is made to such analysis for confirmation of his assertion that such requirements "indicate that its enforcement will doubtless effect the disappearance of all but organized institutions," and he might properly have said, all but *commission endorsed* institutions. [Gospel Army, T. R. pp. 109, 110.]

The ramifications of the Notice of Intention reach into data required to be kept by the organization for which the solicitation is made. [Section 44.08, T. R. p. 17.]

Section 44.12 likewise reaches Section 44.06 which authorizes the board to call for further information without limit, beyond that supplied in the Notice of Intention; it reaches Section 44.03 [T. R. p. 13] which empowers the board to make private investigation as to allegations of such notice; it grasps Section 44.02 [T. R. p. 11] which authorizes the board to recall the Information Card, and Section 44.01 [T. R. p. 10] which defines and classifies solicitors and promoters: it is also directly connected with Sections 44.13 [T. R. p. 16], 44.14 [T. R. pp. 16, 18], 44.16 [T. R. p. 19], 44.17 [T. R. p. 19], 44.18 [T. R. p. 19], and 44.19 [T. R. p. 20]. Section 44.16 exempts only solicitations made "solely" for evangelical, missionary or religious purposes, and it exempts the solicitors for such organizations from the burdens of the

same list of sections, if the solicitor represents in each case that the entire amount collected, "without any deductions whatever" shall be turned over to the "named beneficiary." [T. R. p. 18.]

By exempting solicitations "solely" for religious purposes as above stated, it thus excludes the need of the Information Card, but the exemption carries the qualification that if the board is of "the opinion" that the solicitation "is calculated to give the impression" to the person solicited that the purpose is "in whole or in part charitable," the board shall investigate and "give publicity to its findings in such manner as it may deem best to advise the public of the facts of the case."

Section 44.12 is qualified by Section 44.07 [T. R. p. 15], which limits the use of the Information Card; the same is true of Section 44.08 [T. R. p. 16]; it is qualified and restricted by Section 44.10 [T. R. p. 16], which requires filing of formal written permission of the association for which solicitation is made, and Section 44.11 [T. R. p. 16], which adds to such requirements.

Section 44.12 goes forward and in Section 44.14 piles up the burden of detailed reports to the board upon the solicitor who has used the Information Card and upon the association for which solicitation is made; Section 44.15 adds additional burdens as to the use of the Information Card in soliciting, almost as comprehensive as Section 44.05; Sections 44.17 and 44.18 [T. R. p. 19] are minor limitations on the use of the Information Card in

soliciting, and Section 44.19 is tied firmly in line with Section 44.12, since every promoter is made a solicitor. [Section 44.01; T. R. p. 10.]

Section 44.16 leaves appellant and its solicitors subject to Section 44.12, and all others involved with it, but by indirection it becomes the basis for the exclusion of appellant and other similarly situated, from classification as religious organizations, for it exempts from Sections 44.12, 44.02, 44.03, 44.05, 44.06, 44.07, 44.08, 44.09, 44.10, 44.11, no charitable activity and no solicitation, for a "solely" religious purpose if 100% of the donations are not applied to the intended purpose.

Section 44.05 contains provisions which reach back to Section 44.06, and Section 44.06 likewise relates back to 44.03, which depends in part on 44.02, which is qualified by 44.01.

In other words, the simple charge of violating Section 44.12 always involves a violation of 44.15, and usually or may, in any particular case involve a violation of any one or several of the other sections above enumerated.

For example, the defense might be that the thing solicited was for a "purely" religious purpose. (Sec. 44.16); it might be that a permit had been received (44.09); and the prosecution might counter by showing that the permit or Information Card had been revoked or recalled (Sec. 44.01), and so on *ad infinitum*.

Hence, the entire argument which assails the constitutionality of the whole ordinance and at least any of the

sections which immediately connect with or qualify Section 44.12 applies and challenges the validity of this section.

However, in and of itself, Section 44.12 is unreasonable, burdensome, arbitrary and capricious and violates the due process clause of the 14th Amendment.

Therefore in its application to appellant Murdock, Section 44.12 violates his right of freedom of religion and is an unlawful prior restraint upon the exercise thereof.

In respect to appellant Rescue Army it violates the same due process clause in that it deprives said appellant of the right to pursue the occupation of acquiring money and goods and distributing the same, all for charitable purposes—a most useful and beneficial avocation.

Indirectly, it violates the equal protection of the laws clause of said 14th Amendment because the power is given to the Department administering the entire ordinance to discriminate among charitable organizations by endorsing some and not others without the guidance of any definite standard fixed by law, whereas if such a reasonable standard were so created, appellant might comply therewith.

Said last named guarantee of the 14th Amendment is similarly violated by other provisions elsewhere in this brief pointed out. Appellants therefore earnestly contend that Section 44.12 is null and void.

The Instant Ordinance Cannot Be Upheld as a Regulatory Measure Necessitated for the Protection of the Public Against Fraud.

The majority opinion in the instant case, the Supreme Court, states:

> "The ordinance is designed to protect the public from fraud and deception in the solicitation of funds for charity and to provide the public with information from which it may determine the nature and trustworthiness of the charitable purpose for which the collection is made."

The only justification advanced by the majority opinion in the *Gospel Army* opinion is the reason suggested in the above caption. (27 Cal. (2d) at p. 245.)

It seems that Justice Carter's dissenting opinion in the *Gospel Army* case provides a complete and irrefragible refutation of the sufficiency of this ground as a basis for holding the instant ordinance valid as against attack upon the ground that its whole scheme and plan, and especially its key sections, are unreasonable and unnecessarily burdensome, arbitrary and capricious, even as police regulations of a secular business and particularly of so necessary and virtuous a calling as the dispensation of charity. If his view is sound, of course such a law cannot stand where, as in this case, it is made the vehicle through which prior restraints of an unprecedented character are used to shackle the exercise of religious freedom.

Justice Carter quotes from *Schneider v. Irvington*, 308 U. S. 147, 161, 84 L. Ed. 155, as follows:

> "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a mu-

nicipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens. some persons may, while others may not disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on policy authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press."

Again Justice Carter reasons:

"The unreasonable curtailment of this activity merely because some are addicted to fraudulent and deceitful practices in the name of charity, is as unthinkable as would be the dissolution of established institutions merely because dishonesty and corruption have at times been uncovered in their administration. The public as a whole cannot be freed from the entire power of decision as to the worth of the cause for which they are solicited or their inclination to contribute. If the constitutional guarantees are to be upheld, then the public must expect to bear some portion of the burden of seeing that their gifts are made only to worthy and honestly administered causes."

And elsewhere in his dissenting opinion, we read:

"Resort to the penal statutes and usual methods of dealing which this evil is said to afford insufficient protection, in that warm hearted and generous

citizens are especially vulnerable to solicitations made in the name of a religion or charity because of the nature of the appeal and their reluctance to turn a deaf ear to any cry of the poor and needy. Thus a delicate social problem is posed. Which is the more important, to give the public added protection, over that of the penal statutes, against annoyance, inconvenience, and possible fraud, or to preserve intact the cherished right of religious liberty? Should the State essay, at the expense of invasion of a constitutional right, to protect a citizen from his own inclination, or perchance his weakness, in responding to charitable solicitation without due inquiry into the worth of the sponsored cause? Is it not more in keeping with the American tradition to instill in youth and preserve in the thought of the people that individual independence, strength of character, moral stamina, and perception which will enable them to judge personally the good or bad faith of a colporteur or solicitor and the merit of the cause he espouses?

"That some fraud may escape detection is to be anticipated. This is more or less true in all walks of life despite volumes of protective legislation. But the diversion to wrongful channels of some part of the public contribution to charity is not a major catastrophe when weighed against the cost of protection effected only by carving a large slice from the bill of rights." [Gospel Army, T. R. p. 100, *et seq.*]

The language of this Court in the *Schneider* case opinion amply covers the instant Ordinance and this Court apparently regarded the law as so well settled that citation of authorities or precedents would be superfluous.

It will be noted that the same opinion eliminates "public convenience" as a valid reason for enactments which infringe the rights of "charity and religion," for it is said:

> "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institution."

The Entire Scheme, Plan and Purpose of the Ordinance Contravenes the 14th Amendment to the Federal Constitution.

Since the appeal herein reached this Court, for the first time, appellees in this case and the companion appeal, *Gospel Army v. City of Los Angeles*, have raised questions as to asserted narrowness of the issues and the positions of appellants as excluding them from the right to be heard in this Court.

To refute such contentions and to show that throughout these litigations and at all stages, especially as presented to the State Court of last resort, the validity and constitutionality if the entire Ordinance involved has been challenged by one side and defended by he other, and that said Court considered and determined these appeals on that basis, there is included in the Jurisdictional Statements such excerpts and statements of the contents from briefs and opinions of the State Supreme Court as counsel for appellees deemed sufficient. (Jur. Stat. pp. 17-57.) Also all opinions are set forth in the Transcript of the Record. [T. R. p. 51, *et seq.*]

In appellants' brief and the dissenting opinions of the Supreme Court, the principal provisions of the Ordinance are closely analysed, although this procedure was not followed in the majority opinions.

Because the inclusions of these opinions in the Record is required, it is assumed that they are regarded as valuable aids to this Court and it is believed that appellant in this case might safely rely entirely upon the dissenting opinions of Justices Carter and Edmonds and a comparison thereof with the majority opinion, in *Gospel Army v. The City of Los Angeles*, 27 Cal. (2d) 232.

It appears that the mere recitals of the restraints and burdens which beset the way of one who would solicit money or goods for a worthy, small, church-sponsored charity cause suffices to create astonishment that such a plan and procedure could have been enacted anywhere in America, under legal advice, in view of the standards provided in *Cantwell v. Connecticut*, 310 U. S. 296; *Murdock v. Pennsylvania*, 319 U. S. 104, and other decisions of this Court.

Let us visualize a *colporteur* or a "mendicant preacher" or a solicitor for a local church being confronted with the following conditions precedent, restraints prior to soliciting, and burdens as he proceeds:

The would-be solicitor appears at the office of the City's Board of Social Service Commissioner and states his errand. Assuming that he is courteously informed how to proceed, he learns that he must prepare and file a "Notice of Intention" to solicit [Section 44.05, T. R. p. 13], and that the same must contain the "complete information," upon "eleven comprehensive phases of the

undertaking" as Justice Carter describes them, which are included in the following items:

1. The purpose of the solicitation and use of the contribution to be solicited;

(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable.

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a

true copy of the original of such resolution by the officer of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation.

This last provision *expressly* bars all who have not attained such a degree of learning as to the controversial terms of the Ordinance that he may abide by them.

The question at once arises, is the purpose of Section 44.05 merely the "identification and registration" of the applicant as appellees have contended?

Assume that said *colporteur,* mendicant preacher or small-church solicitor eventually presents his idea of good and sufficient information as required.

Having, of course, familiarized himself with all provisions of the Ordinance, he will have presented with the "Notice of Intention.", a statement of any agreement between himself and the church or other organization for whose cause he desires to solicit. [Section 44.06; T. R. p. 14.]

Also, the small-church solicitor, or *colporteur* must produce "the written authorization of the organization" he represents. [Sec. 44.10, 44.11, Tr. p. 16.]

The applicant has learned that before he solicits one dime, he must have obtained the Department's permit or license (Sec. 44.12) and that sufficient time will elapse before he may be thusly armed that the following conditions and delays must be contemplated: Pursuant to

Section 44.06, "Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however that the Board, for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or on any association, by at least two officers of such association and shall be open to the inspection of the public."

Also, the Department has power [Section 44.03, T. R. p. 13]:

"(a) To investigate the allegations of Notice of Intention, or any statement or reports;

"(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made";

The applicant must also contemplate that no limit is placed by the ordinance upon either the *number* of requests for information which the Department may make or the time which may be spent in the investigations or the field which the inspection and copying of records, etc., may cover.

Assume that the foregoing procedure has eventually been completed to the satisfaction of the department and

an "Information Card" (permit or license), is about to be issued, and the applicant receives it, with fear and trepidation for he has learned that the Department has power (Section 44.03), to issue it in more than one form, that is,

> "(d) To issue to all solicitors Information Cards which shall show:
>
> (1) That same is issued as information for the public and is not an endorsement;
>
> (2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;
>
> (3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;
>
> (4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made."

The reason for fear and trepidation is apparent. The implication of a plain statement (which as will appear later must be exhibited to everyone who is solicited) that the Information Card *is not an endorsement* by the Department would be most unfavorable to the solicitor's success.

But far more important, under "(4)," above, the Department may see fit to set forth information gained from *any source* and in any volume and which the applicant has had no opportunity to explain or deny which would cause persons solicited to refuse with scorn or in disgust.

However, assume that the solicitor concludes to use his Information Card. He approaches A, intending to ask for a contribution. Following the directions of Section 44.12, he attracts A's attention and either "exhibits" the Information Card and asks that it be perused or starts reading it, and if A permits, reads the document through, and thereafter, and not before, he may accept a contribution, for which he must give a receipt. [Section 44.15, T. R. p. 18.]

In visualizing all that this transaction, which may involve a dollar or a few cents, imports, what Justice Edmonds said, after careful analysis of the sections involved is impressive. It reads:

> "The Information Card which the solicitor must carry with him, and either read to each prospective contributor or present to such person for his perusal, allowing him sufficient time to read it before accepting any donation, may therefore be a sizeable volume of data which in practice, if not in purpose, will effectively block public support of an organization which has a legitimate purpose and against which no criticism justly may be made.
>
> "To meet the demands of the city, the receipt required for each donation must be signed by the solicitor and contain 'in addition to a description of the amount and kind of the contribution, substantially the following matters: (a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made. (b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated. (c) A statement that the Information Card, issued by the

> Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for . . ." (Section 44.15.) "Only by means of a traveling office could a solicitor comply with all of these requirements." (27 Cal. (2d) p. 281.)

Thus it is safe to say that any actual solicitation in compliance with this ordinance might require the attention of the contributor for a period of half an hour or more although he might be willing and desirous of contributing as soon as being informed that some family was in dire distress or of an otherwise needy cause.

Assume that the purpose for which the small church desires contributions of money or goods from the public, is to provide for destitute families in the neighborhood, while attempting to accomplish moral and spiritual purifications, the question arises as to how many would perish before the efforts of the church and its solicitors may be permitted to reach fruition after compliance with such an ordinance.

Surely it must be presumed that the mendicant preacher was dealt out of the picture before taking the first step.

However, the difficulties of our *colporteur* or small-church solicitor have only begun.

In Section 44.16 [T. R. p. 19], it is provided:

> "Provided, however, that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any

such solicitation or the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case."

As Justice Edmonds points out:

"No limitation as to the extent of such an investigation is imposed and no time limit is fixed within which it must be concluded." (27 Cal. (2d) p. 285.) [Gospel Army, T. R. pp. 125, 126.]

Obviously the Board is given *carte blanc* with no other standard except its own idea of what may "give the impression" sought to be, removed, to arbitrarily publish any statement to detract from a cause which its members condemn, whether based upon prejudice or any other motive.

Section 44.14 requires that the solicitor make "detailed" reports. It reads:

"Sec. 44.14. Solicitations—Report—Time—Expenses—Uses:

"Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed.

> Every such report shall be made on forms to be furnished by the Department, and signed by the persons or association filing or obligated to file the Notice of Intention and such report, if made by any such association, shall be signed by at least two officers thereof. Provided, that when any such solicitation is made by any such association such report need be filed only by such association and not by an individual solicitor engaged in any such solicitation." [Tr. p. 17.]

How these requirements can be harmonized with the rights of the *colporteur* or the mendicant preacher or the concept of the permitted identification and registration system, is difficult to perceive.

Up to the present time, no attempt by court or counsel to do so has been made.

Concerning the provisions of the Ordinance regulating the class of solicitors, called "Promoters," Justice Carter has shown that they are even more restrictive than the provisions which have been considered relating to other solicitors.

His opinion analyses, Section 44.19, and its subsections, which deal with promoters, and he shows that "the comment which" he had made "concerning the unreasonableness of the ordinance provisions relating to solicitors applies with double force to these 'promoter' provisions, and they are also subject to additional criticisms." (27 Cal. (2d) pp. 264-271.) [Gospel Army, T. R. pp. 112-116.]

The following provisions, selected as simple examples, render the entire ordinance violative of the due process clause of the Fourteenth Amendment as contravening the

right of freedom of religion and also as the deprivation of the right to acquire, possess and give away property:

The ordinance requires one who would solicit to obtain a permit from the Department of Social Service as a condition precedent to soliciting. [Sec. 44.05; T. R. p. 13.] This is an unlawful restriction upon the exercise of the right of freedom of religion. (*In re Darte*, 172 Cal. 147; *Cantwell v. Connecticut*, 310 U. S. 296.)

The Department is empowered to refuse a permit. The ordinance contains no provision which directs that upon compliance by an applicant with designated requirements an Information Card (permit) shall be issued.

Ten days before the applicant may begin soliciting he must file the Notice of Intention [Sec. 44.05; T. R. p. 13], which is the application for a permit, and the Department may investigate the matter and no time limit is placed on the investigation, and may require additional information without limit as to such requirements. [Sec. 44.03; T. R. p. 13.]

These provisions alone would bar an itinerant preacher or solicitor from serving their calling in Los Angeles, and thus constitute unlawful prior restraints [*Murdock v. Pennsylvania*, 319 U. S. 104], and render the ordinance void because legislative enactments may not, under the guise of the police power, impose unnecessary, unreasonable or unduly burdensome restrictions upon the pursuit of useful activities or of private property.

Washington v. Roberge, 278 U. S. 116;

Holden v. Hardy, 169 U. S. 366;

McKay Jewelers, Inc. v. Bowron, 19 Cal. (2d) 595,

In re Fuller, 15 Cal. (2d) 425;

Skalko v. City of Sunnyvale, 14 Cal. (2d) 213;

Ex parte Dickey, 144 Cal. 234.

In that behalf Justice Carter's opinion, *supra*, shows that the definition of the term "Promoter" provided in Section 44.01, includes "any person who for a pecuniary compensation solicits for another," hence, the *colporteur* and the churchman who aids in raising funds for activities of his church and who as Justice Carter describes him, is often an "indigent religionist" and is given some remuneration, is a "promoter," and in the instant case, also, appellant Murdock, is made a promoter.

Justice Carter shows that the provisions which require such a solicitor to pay a "license fee" of $25.00; and to post a $2000.00 bond to secure a license are unreasonable and discriminatory when compared with the lack of such requirements as to solicitors not classed as promoters, and that there is "no indication" in the ordinance that the costs of regulation "were fixed in contemplation of reimbursement" to the city for expenses.

He quotes *Murdock v. Pennsylvania*, *supra*, as saying of a similar license fee:

> "It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question," and "But if the formula of this type of Ordinance is approved, a new devise for the suppression of religious minorities will have been found." (27 Cal. (2d) 267, 268.)

Surely, as far as the pernicious character and effect of such devises are concerned and their unreasonable and unconstitutional results are to be considered, it matters not whether the motive which has actuated the enactment is aimed at crushing religious minorities, or avoiding the cost and inconvenience of being the recipient of too numerous requests for donations.

Justice Carter points out that the qualification of "good reputation and character" required for a promoter, as a condition precedent to the exercise of the right of religious liberty is unconstitutional for possession of "good reputation" in the "eyes of a large group, or a majority" cannot be made the test for the exercise of such right, and the "requirement is not a sufficiently fixed and definite standard," in support of which criticisms the *Murdock v. Pennsylvania* and *Cantwell v. Connecticut* opinions are quoted.

Also, said dissenting opinion declares that the terms "unfair, unjust" and "inequitable" as used in Section 44.19 as grounds for the revocation of a promoter's license are "vague and uncertain and may well result in the same religious censorship arising from a determination of good reputation and character," and that Subdivision 8 of Section 44.19, which requires "good moral character" as a prerequisite to issuing a license is subject to the same criticism. [27 Cal. (2d) pp. 270-272; *Gospel Army*, T. R. pp. 117, 118.]

Justice Edmonds expresses like views as to the terms "good reputation and character" and "unfair, unjust, inequitable," as used in Section 44.19, and quotes *Hoyt Bros., Inc. v. Grand Rapids*, 260 Mich. 447, 128 A. L. R. 1363, in which similar terms were held violative of con-

stitutional prohibitions against "deprivation of life, liberty or property without due process of law." [*Gospel Army*, T. R. pp. 134, 135.]

As a summary, the general tenor and design of the ordinance is well expressed by the last named jurist, as follows:

> "Large groups of citizens of every faith and creed are regularly devoting much time and effort, at great personal sacrifice, to the cause of those who are in need. If the work in behalf of the less fortunate among us is done in the name of or in connection with the promulgation of a religious doctrine, then the Los Angeles ordinance authorizes the Department of Social Service to add to the indifference, inertia and self-interest which solicitation must always overcome, either the condemnation or damnation by faint praise of an official bureau which is authorized to reach a conclusion without regard to anything but the personal opinion of some administrative officer as to the worthiness of the purpose. Whatever is done in the name of religion for a charitable purpose, the ordinance declares in effect, is to be viewed with suspicion and distrust. There can be preaching without official intervention, but any practice of Christian virtues is to be carried on only under the watchful eye of the Department of Social Service according to its notion of 'the public interest.' And yet my associates say that such legislation lays no restraint upon religious freedom." [*Gospel Army*, T. R. p. 126.]

Scope of the Review in This Court and Effect of State Supreme Court's Decision.

In Vol. 2, Ohlinger's Federal Practice, page 368, it is said:

> "It is, of course, clear that federal courts do not follow state decisions as to federal rights, whether arising under the constitution, treaties or statutes,"

and it is said that the determination by the Supreme Court of the United States of a federal question

> "is binding upon the State courts, and must be followed, any state law, decision, or rule to the contrary,"

citing *Chesapeake & Ohio R. Co. v. Martin*, 283 U. S. 209, 75 L. Ed. 983.

Also, in the same authority (Vol. 1, pp. 833-840) it is said:

> "The Supreme Court has jurisdiction where the highest court of the state *actually decides* the federal question and places its judgment thereon even though it may not have been raised in the lower court."

It is so held in *Manhattan Life Ins. Co. v. Cohen*, 234 U. S. 123, 58 L. Ed. 1245, and other decisions are cited by Ohlinger as "to the same effect."

Similarly, in *Herndon v. Levy*, 301 U. S. 242, 81 L. Ed. 1066, it was held that in a proper case, when the state court treats the question as having been raised, it will take jurisdiction.

One consideration in deciding whether a substantial federal question is presented is a division of opinion among the members of the State Court.

Louisville & N. R. Co. v. Melton, 218 U. S. 36, 54 L. Ed. 921.

It is stated in the *Gospel Army v. City of Los Angeles* opinion that "the conditions that a social agency must meet to be endorsed by the Social Service Commission and the standards that govern the commission are set forth in a separate Ordinance, the relevant part of which is quoted in the margin."

Among the parts of said ordinance which are thus quoted are the following:

> "(a) That the title to any property in the City of Los Angeles owned by such charitable corporation or association is vested in the name or names of said charity, if it be a corporation, or else in the name or names of a responsible trustee, or trustees under a declaration of trust or other written instrument, setting forth the rights of such charitable corporation or association therein, and recorded in the Records of the County Recorder of Los Angeles County."
>
> "(d) provides that 'not more than 15% of any amounts collected by solicitation has not been paid "for expenses of solicitation."'
>
> "(h) provides that 'employes of such corporations' must be 'persons of good moral character and reputation' and that the association has used reasonable care in selecting persons of good moral character and experience as solicitors for its funds." [*Gospel Army*, Tr. pp. 89, 90.]

Justice Carter's dissenting opinion contends that as applied to a solicitor or promoter for charities the requirement that they be of "good reputation" is unreasonable and that the factor of reputation is "not an issue" in a reasonable registration or identification ordinance. He shows that this requirement might well exclude from use-

fulness and their right to in this way exercise their freedom of religion, merely on the basis of official religions or prejudice. [*Gospel Army*, T. R, pp. 117-120.]

Also, the provision of this separate ordinance which makes it essential that any organization seeking endorsement pay not to exceed 15% of the amount collected for the services of solicitors is grossly unreasonable, unduly burdensome, and in practice is highly discriminatory.

A most convincing exposition of this thesis is contained in *Ex Parte Darte*, 172 Cal. 47.

Justice Hinshaw says:

> "Again, let us illustrate. Re-Commission: 'The Municipal Charities Commission is delegated power to indorse (which means grant permits to charitable institutions under which alone they are entitled to live) such charitable institutions as meet the actual needs of the community, attain a reasonable standard of efficiency, and are so conducted as to insure the public in the wise use of funds.' This language taken from the first of the ordinances above quoted, sounds reasonable. But as interpreted by the Municipal Charities Commission, what does it mean? In their own language it is this: Such a charity is 'one that will execute every trust for charity with the least possible deduction for expense.' Here is a mark set, and that mark is the absolute perfection of human endeavor. No tolerance, no charity, is shown by this Commission of Charities, for any human effort, however self-sacrificing and efficient, that does not attain human perfection. Charities in Los Angeles must reach a pitch of perfection unattained by any other human institution, or in the view of the Municipal Charities Commission they are unfit to live."

In the foregoing, the opinion considers charity without regard to religion and *apropos* the same subject, but referring to the "religious aspects," the opinion reads:

> "And it will be found better in the long run that the free exercise of religion be preserved in its integrity, better for the nation, better for charity itself which owes so much to religion, even if the efficiency of religious charities be not up to the standard of perfection set by the Municipal Charities Commission. If, under that standard, seventy-five cents of every dollar would go to the objects of charity, while under the less efficient methods in vogue but fifty cents of each dollar actually reaches the beneficiaries, it is not to be forgotten that there will be many millions fewer of these dollars to be distributed in charity if the activities of the religious are hampered, thwarted, and stayed."

One of the ordinances of the City of Los Angeles whose invalidity was declared in the *Darte* case, also delegated the power of endorsement of charitable organizations to the "Charities Commission" of that era, and that commission demanded as a condition precedent to endorsement that the Salvation Army deed its local property to a "local board of managers, or trustees."

This apparently was the "last straw" among numerous demands made, which the Army felt that it could not deliver.

After stating that certain safeguards to protect the public from charlatans and imposters might be provided for reasonable regulation of charities (which are not applied to religious charities by the opinion), it is said:

> "But this falls far short of the law under review, which permits such charitable work to be carried on

only by * * * trustees satisfactory to the municipality."

The instant provision above quoted also goes far beyond the bounds of reasonable regulation in impliedly requiring that a charitable organization have property vested in its name, or that it be placed in the name of a responsible trustee.

Hence appellants contend that the instant ordinance upon whose assumed validity the majority opinions in the *Gospel Army* and *Rescue Army* cases justifies the provisions of the instant ordinance empowering the Department to endorse, and to thus exempt certain charitable organizations from all burdensome and discriminatory provisions, is, itself burdensome, unreasonable and arbitrary and violative of the 14th Amendment and of each of its guarantees.

Upon all of the grounds heretofore presented appellants seek reversal of the judgment of State Supreme Court.

Respectfully submitted,

ROBERT H. WALLIS,
Attorney for Appellants.

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IN THE

Supreme Court of the United States

October Term, 1946.

No. 574

THE RESCUE ARMY, a corporation, and CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES,

Appellee.

APPELLANTS' REPLY TO APPELLEE'S BRIEF.

ROBERT H. WALLIS,
348 East Fourth Street, Long Beach 2, Calif.,
Attorney for Appellants, The Rescue Army and Charles T. Murdock.

Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

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Appellee.

APPELLANTS' REPLY TO APPELLEE'S BRIEF.

Appellants' counsel deems it necessary to reply to certain matters contained in appellee's brief.

Appellee's brief (p. 4), apologizes to this Court for "including statements of public records in its brief in the case of the Gospel Army v. City of Los Angeles, as having been the result of inadvertence. However, the inadvertence is repeated forthwith in its brief herein (p. 8), wherein it is, in substance and effect, related that the instant Ordinance has "for a quarter of a century" caused no complaints from those interested in collecting funds for charity, who have succeeded in making satisfactory reports of their endeavors, and that more than "Thirty Million Dollars" were so collected "during the first nine months of 1946."

This attempt to pump supposed red corpuscles into the otherwise pernicious anemic lifestream of appellee's defense of the validity of the Ordinance herein involved, is obviously improper.

Appellee's statements, "off the record," open a wide field. They involve matters which, if not barred by rules of evidence as well as of procedure, might have great persuasive force in this case. The verity of the statements, themselves, is obviously subject to challenge. Inquiry would be in order as to the probably limited group of "those" who are required to make such reports and is within said field, it being remembered that the "endorsed" organizations are exempted from such burdensome provisions of the Ordinance; and it would be proper to delve into said "official reports" for information as to how many of the "little people" organizations are to be found among the authorized distributors of the alleged "in excess of thirty million dollars" given for charity and to find out how promptly and efficiently the same was distributed to those in dire distress and immediate need.

By these examples of matters pertinent to appellee's testimonial statements, it seems obvious that the wisdom of rules which exclude subjects extrinsic of the record is justified and appellant again protests the continued inadvertence of the Los Angeles City attorney in his most recent brief.

Referring to Justice Carter's statement in his dissenting opinion in which he says that the requirements of the Notice of Intention provision (Sec. 44.06), are more complex and demanding than the much maligned income tax," and will "doubtless effect the disappearance of all but organized institutions," appellee's brief (p. 9), declares that

the above prediction "is wholly unsupported by the facts," unless "he intends to include" in the term "organized institutions," "local units of Parent-Teachers' Associations, Job's Daughters, and hundreds of other community groups which give dances, teas, dinners, etc., to secure funds for charitable uses."

Here again, the Los Angeles City Attorney, by inference and plain implication testifies that "hundreds" of organizations such as those named have been unhampered under the instant ordinance, and that, consequently, Justice Carter's analysis of Section 44.06 and its burdensome, time-consuming demands; is valueless.

Had appellees attempted, by discussing the provisions which Justice Carter analyzed, to show wherein the jurist was in error, this would have been fair argument, but the testimony given by implication is improper.

We question the truth of the allegations which are made, especially when it is implied that there are "hundreds of the organizations which appellees describe; we doubt that any of them upon giving a "tea," a "dance" or a "dinner," are required by the Department to file a "notice of intention" and to accompany the same with the voluminous data provided by Section 44.06. Appellant would, if the subject were properly before this Court, expect to show from appellee's records, that Justice Carter's prediction could well have been stated as a long-accomplished fact.

Hence, the impropriety of opening issues by prejudicial, unverified and *irrelevant* statements, directly or impliedly made, is apparent.

None of these matters were considered by the State Supreme Court nor have they been heretofore presented in appellee's briefs, and appellant asks that they be disregarded.

Concerning appellee's brief as it deals with the merits of the appeal, appellants believe the following matters require elucidation:

I.

Appellees' Brief (p. 4) Errs in Its Statement of "Questions of Law" Number "(2)", which Is Set Forth as Follows:

> "(2) Is an ordinance which prohibits solicitation for charity by means of boxes and receptacles without a permit so to do, and which exempts from such prohibition solicitations 'made *solely* for evangelical, missionary or religious purposes,' invalid as it applies to the appellants, and particularly as to appellant Murdock?" (Emphasis added.)

The question concerning Section 44.09 and issue of law as presented by appellant's opening brief and enumeration of "errors to be urged" (App. Op. Br. p. 16 *et seq.*, and pp. 41-43) is as follows:

Is an ordinance which prohibits solicitation for charities by boxes and receptacles, "except by express written permission of the Board," unreasonable, arbitrary and discriminatory, and violative of the due process clause and the equal protection of the laws clause of the 14th amendment to the Federal Constitution in that it provides no standard by which the Board must be guided, and thus, does not said provision impower the Board to arbitrarily and capriciously favor certain applicants and to punish or otherwise discriminate unreasonably against others?; also, the further question concerning the validity of this section, is presented: Does not said quoted language of Section 44.09, violate the right to exercise religious freedom of a solicitor for charity or religion, as well as upon the other grounds above stated?

The failure of appellee's counsel to grasp the real questions involved in appellant's attack upon the validity of Section 44.09, no doubt accounts for the entire lack of any attempt to rebut appellant's contentions in that behalf, although appellee's brief engages in generalizations and the citation of irrelevant principles of law while discussing said section. (See App. Br. pp. 10-12.)

Whatever may be the reason, it is certain that the true and only question explicitly set forth and argued in appellant's opening brief and statement of grounds to be urged, is not even mentioned in appellee's brief.

II.

Appellee's Brief Refers to Certain Sections, Among Which Are Sections 44.9, 44.05, 44.16, and Asserts That They Do Not Involve a "Religious Test."

By each of these sections, the Department is given unrestricted power to make decisions and to do so by any test, religious or secular, which their inclinations suggest, while by Section 44.16, the Ordinance itself arbitrarily creates the test, namely, that an activity must be for a "solely" religious purpose, or it is made non-religious, and the board is empowered to decide whether a given solicitation will be for a "solely" religious purpose.

Since the ordinance clearly evinces the purpose of segregating religious and charitable activities upon this unreasonable and arbitrary basis, the Department which administers the law, not only may, but should, to effectuate the law, apply the religious test prescribed therein in all of the numerous instances wherein said administrative board is given unrestricted discretion in making determinations as to facts.

III.

The Opposing Brief (p. 15) Asserts That the State Supreme Court Held That the Ordinance Involved "Does Not Infringe Upon One's Religious Liberty, Inasmuch as It Exempts From It the Provisions of Such Ordinance Solicitation 'solely for Evangelical, Missionary or Religious Purposes' ".

Unfortunately appellee's brief neither quotes the majority opinion nor cites the transcript.

However, appellant's counsel, is unable to find in the opinion any language in accord with the above statement.

On the contrary the majority opinion decided that the ordinance specifically differentiates charitable from religious purposes (Gospel Army, Stat. of Jur. p. 70), and holds that the severance of charity from religion by a regulatory law, as an exercise of the police power, does not violate the constitutional guarantee of freedom of religion; and the provisions of Section 44.16 which effects the severance, on the basis of classing all activities as charitable which are not "solely" for evangelical, etc. purposes is within the group of sections which said opinion saves from unconstitutionality by saying: "We find nothing unduly burdensome or unreasonable in any of these provisions." (Gospel Army, Stat. of Jur. p. 56), and as to the provisions of the entire ordinance, said opinion states: "In our opinion the classification affected by this ordinance is reasonable and the standards provided are adequate." (Gospel Army, Stat. of Jur. p. 60.)

By these generalities and not otherwise, as Justice Carter points out, are the various challenges by appellant to individual provisions of particular sections, decided and rejected, among which provisions challenged is the classi-

fication of religious and charitable activities and the arbitrary demarkation line between them made by the term "solely" in section 44.16.

Reply to Appellees Point IV.

Appellee's Point IV consists, almost exclusively, of bald assertions relative to the effect of the Ordinance sections to which it refers. For example, it is said:

> "The City of Los Angeles does not, by its Ordinance, permit the Social Service Department of the City to refuse a 'permit' . . . ."

Appellee fails to point to any language, word or syllable of the Ordinance which names the conditions upon which, if complied with, a permit must be issued. There is no such provision to be pointed out.

On the contrary, as shown in the dissenting opinion of Justice Carter, and in appellant's opening brief herein, appellant has always contended that "under a properly-drawn Ordinance" standards must be provided which the Administrative Board must follow, and that since the instant Ordinance contains no such standards, it violates the due process clause.

Inconsistently, on the same page (p. 15) of appellee's brief, an argument is made as follows: the right to investigate "connotes the right to take appropriate action after conducting the investigation. Thus assuming that the investigation discloses that the applicant had recently served a sentence for embezzlement and had a long criminal record" who would say that under a properly drawn ordinance the city could not refuse him registration?

This sounds quite plausible but it proves too much.

It cannot be and has not been denied that the ordinance permits investigations, without limit as to scope or time and at several stages of the proceeding through which the application for a permit passes and that no provision requires that upon certain named conditions a permit shall be issued.

Therefore, if the power to investigate connotes power to take "appropriate" action, and to deny a permit in the case supposed, how can it be rationally declared that the ordinance does not permit the Department "to refuse a permit?"

Of course, the Department may refuse a permit, and in appellant's brief in reply to appellee's brief in the *Gospel Army* case, it has been shown by the reporter's transcript that the Department did refuse a permit to that organization and claimed the right to refuse any such application.

If, as appellees indicate, it is proper, under this standardless Ordinance, that a permit should be denied to an embezzler and a long-record criminal, there is nothing to prevent the denial of a permit to one of God's noblemen who advocates some religious view or ideology which the Board members happen to regard as heresy, or, they may act upon any other whim or prejudice.

On the other hand, appellant denies that, regarding the matter from the religious aspect, a city can deny a permit to one who seeks to preach the Gospel or to sell religious literature or to solicit secondhand goods or money for a religious cause on the sole basis that he has committed one or more crimes. Surely to empower a city to deny a permit upon that ground alone would require that the Ordinance authorizing it be narrowly drawn with the

most clear precision and reasonableness as to the conditions which empower such denial.

The recency of the embezzlement would be immaterial, for the worst sinner can repent in a moment. It seems that the only reasonable and lawful condition which could be set up would be that reformation or rehabilitation of the applicant be shown.

It is believed that other matters presented in appellee's brief have been covered in appellants' opening brief.

Respectfully submitted,

ROBERT H. WALLIS,

Attorney for Appellants, The Rescue Army and Charles T. Murdock.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 574

THE RESCUE ARMY, A CORPORATION, AND CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

STATEMENT OF MATTER AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE UNITED STATES SUPREME COURT.

RAY L. CHESEBRO,
City Attorney,
Counsel for Appellee.

DONALD M. REDWINE,
Assistant City Attorney,
JOHN L. BLAND,
Deputy City Attorney,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 574

THE RESCUE ARMY, A CORPORATION, AND CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Appellee

STATEMENT OF MATTER AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE UNITED STATES SUPREME COURT.

The appellee respectfully submits a statement of matter and grounds making against the jurisdiction of the United States Supreme Court as follows:

I

Statement of the Case

This case is one of original jurisdiction upon prohibition in the Supreme Court of the State of California, having been transferred to such court from the District Court of Appeal after the latter court refused to issue a writ upon

the petition. Respondent filed its demurrer to the petition and also an answer thereto.

The prayer of the petition was for a peremptory writ of prohibition, addressed to the Municipal Court of the certain sections of the Los Angeles Municipal Code regulating solicitation for charitable purposes and exempting from its scope of regulation solicitation for purely religious purposes.

The ordinance provisions challenged are Sections 44.01 to 44.19 of the Los Angeles Municipal Code (Ordinance No. 77,000 of the City of Los Angeles as amended).

This action concerns the validity of the chapter and article of the Los Angeles Municipal Code which are involved in *The Gospel Army* v. *The City of Los Angeles*, October Term, 1945, Docket No. 1216, United States Supreme Court, in which case the question of jurisdiction has been continued until time of oral argument.

The questions presented in two cases are not identical, although there is perhaps an overlapping by reason of the fact that the plaintiff and appellant in each case has attempted to challenge the validity of all sections of the chapter. The cases present a situation wherein the City Attorney of the City of Los Angeles is defending two different clients in upholding the validity of the ordinance and such defense has been and at present is being handled by two different deputies of such office. This places the writer of these objections in the unfortunate position, in order to protect his client, of having to discuss certain jurisdictional points which may apply to both cases, although some of them appear not to have been urged in the *Gospel Army* case in the City Attorney's objections to jurisdiction.

The foregoing statement is made in order that the Court may fully understand that nothing herein said is

intended as or calculated to be deemed an argument in the *Gospel Army* case, irrespective of how much it could be said to apply. The right to urge in that case, at the proper time, any argument included herein is of course reserved.

Because the same ordinance is involved, it becomes necessary for us to show similarity of and distinctions between the two cases as a mean of pointing out wherein any argument heretofore made in the *Gospel Army* case (or omission from such argument) does not necessarily apply to the instant case.

Before proceeding further it is proper that we correct what we feel sure is an inadvertent misstatement in appellants' Jurisdictional Statement, at Page One, wherein it is stated that the statute involved is Ordinance No. 77,000 of the City of Los Angeles, which ordinance is entitled "Charities," and that it contains nineteen sections, etc. Ordinance No. 77,000 is officially known as the Los Angeles Municipal Code, and is entitled as follows: "An ordinance enacting a revision and codification of the regulatory and penal ordinances of the City of Los Angeles, to be known as the Los Angeles Municipal Code, providing penalties for violation of the provisions thereof and repealing all ordinances and parts of ordinances in conflict therewith."

Such ordinance consists of nine chapters, numbered I to IX, inclusive, and the chapters are subdivided into articles, divisions and sections. The exact number of sections (some of which are subdivided into subsections) is unknown to us, but it is safe to say the total number of separately numbered sections is in excess of two thousand.

The portion of the Los Angeles Municipal Code involved in this proceeding is Article 4 (Charities and Relief) in Chapter IV (Public Welfare) and consists of nineteen sections numbered 44.01 to 44.19, inclusive. However, not

all or any considerable number of such sections are actually involved herein, although a complete treatment of the sections primarily involved may require some mention by us of most if not all of the other sections. Sections 24.02 to 24.05 of such Code cover the matter of licensing Auctioneers, Secondhand Dealers and Pawnbrokers (Article 4 of Chapter II). There are no sections numbered 24.06 to 24.18.

II

The Gospel Army Case and the Rescue Army Case Compared and Distinguished

Distinction As to Parties Appellant

A

In the *Gospel Army* case the sole plaintiff and appellant is a corporation. In the instant case (Rescue Army) there are two plaintiffs, or petitioners, and appellants, one of which is a corporation and the other an individual.

It is now too well settled to admit of argument that a corporation may not complain of denial of freedom of speech (*Hague* v. *C. I. O.*, 307 U. S. 496, 514), and the same reasons which impelled such conclusion apply with equal or greater vigor to the matter of religious freedom. Religious freedom is freedom to believe in and worship a divine being. A corporation is incapable of reasoning, or believing in or worshiping a diety. The fact that a person belongs to a certain church is not proof that his religious belief is that of the corporation which owns the property, or in whose name services are held.

It follows that in the instant case, there being no property right involved, the corporation (The Rescue Army) cannot maintain an appeal.

It is conceded that, unless otherwise shown, the individual defendant can maintain his appeal.

B

DISTINCTION AS TO STATE OF THE RECORD

If we understand the decision of the California Supreme Court in the *Gospel Army* case, it is not a final judgment, in that it is not one in which there is nothing to be done in the lower court other than to execute the judgment.

While we are inclined to think the rule should be that a decision is a final decision, for the purpose of appeal to the United States Supreme Court, when it settles in the highest court of the state a federal question in such manner that it is the "law of the case" in any subsequent proceeding in the same case in a lower court, it remains a fact that, so far as we can ascertain, this court has never seen fit to so determine.

In the instant case (Rescue Army) the judgment of the state court is a final judgment. The prayer was for prohibition. Respondent Municipal Court demurred and also answered. The Supreme Court, apparently upon the demurrer, denied the peremptory writ upon the proposition, we must assume, that, irrespective of the answer, it presented a question of law only within the original jurisdiction of that court.

C

DISTINCTIONS BETWEEN ISSUES INVOLVED

Essentially the instant case (Rescue Army) involves only the right of Murdock to solicit money upon the streets and public places in the City of Los Angeles, although such appellant in the state court did, and in this court will attempt to, attach many other propositions onto the main one.

If we understand the record correctly, the *Gospel Army* case involves primarily the right of a corporation, organ-

ized and perhaps functioning as a church organization, to operate a secondhand store, and junk and secondhand goods collection business, without a license as is required of other secondhand and junk dealers and junk collectors.

Several other questions, which appear to us for the purpose of the instant case to be incidental and secondary to the prime question in the *Gospel Army* case, seem to have crept into it, but such case can, in our opinion, be fully distinguished from the instant case (Rescue Army).

Bearing the foregoing distinctions in mind, we anticipate no difficulty upon the part of the court in following us in our showing of why, in the *Rescue Army* case, the court has no jurisdiction which it should exercise.

III

Murdock Is Not a Person Injured by the Ordinance

The petition alleges that petitioner Murdock is engaged in purely religious activities.

Petition for Writ, Page 4, Paragraph V, lines 5-21.

Section 44.16 of the Los Angeles Municipal Code, insofar as here pertinent, reads as follows:

> "The provisions of this Article (Article 4 of Chapter IV, being Sections 44.01 to 44.19, inclusive), except Sections 44.01 and 44.04, shall not be applicable . . . to solicitations made solely for evangelical, missionary or religious purposes."

A person may not complain of provisions of a statute (or ordinance) which do not harm him.

Utah Power & Light Co. v. *Pfost*, 286 U. S. 165, 186.

One attacking the constitutionality of a statute is not the champion of any rights except his own.

Hanneford v. *Silas Mason Co.* 300 U. S. 577, 583.

Virginian Ry. Co. v. *System Federation* No. 40, 300 U. S. 515, 558.
Massachusetts v. *Mellon*, 262 U. S. 447, 488.

If, as he claims, Murdock was engaged in purely religious activities, he may not complain because, as to persons engaged in conduct outside the purview of the exception, some provision may be unfair. If he was in fact engaged in soliciting for charitable purposes instead of for religious purposes, he may not shield his violation of law behind a cloak of religion.

In order that there may be no misconception of our position we may as well say here as later that we believe in preserving religious freedom to the full extent which the Honorable Supreme Court of the United States has said it should be preserved, that is, absolute freedom to believe, preach and teach any religious doctrine one chooses and a right to practice any form of religion, subject to reasonable regulation in the interests of public welfare, this irrespective of whether that religion be Christian, Jewish, Mohammedan, Hindu, Shinto or fire worshippers. But, we are not ready to admit that the religious freedom provision of the Federal Constitution must be interpreted so broadly as to constitute the altar of religious freedom the bier of good order, public safety, and general welfare.

Appellant Murdock was charged in the Municipal Court only with solicitation for charitable purposes in violation of Sections 44.09 and 44.12. (All citations are to sections of the Los Angeles Municipal Code unless otherwise stated. Sections 44.01 to 44.19 of such Code are printed herewith as an appendix.)

We have found no cases by federal or state courts which hold that solicitation of charity is not subject to regulation under the police power, but we do find in the majority opinion of the California Supreme Court in *Ex Parte Dart*,

172 Cal. 47, a statement that such solicitation is subject to the police power. The language quoted by appellants from such case is not language approved by the majority of the court. However, it is to be noted that the actual conclusion of law in the minority opinion is in consonance with the position of the appellee herein, where, on page 54, Justice Henshaw, author of the minority opinion, said:

> "And the utmost limit of reasonable regulation in the matter (of charitable work) is reached by acts protecting the public from charlatans and imposters, insuring knowledge on the part of the donors of the purposes to which their contributions may be put, coupled with adequate safeguards against malversation as to the funds received."

The Supreme Court of the United States has often said, with respect to religious freedom, that the granting to administrative officers of power to determine the truth or sincerity of one's religious belief is a void act. However, we have found no cases which hold that the courts, under legislative grant, may not determine whether an act done in the *practice of religion* is one within or without the police power. If it be within the police power to regulate the solicitation of funds for charitable purposes, one who is engaged solely in religious work may not challenge the validity of provisions not applicable to him, nor challenge the power of the court to determine as a question of fact whether he was engaged in acts outside the exception in the ordinance.

IV

There Is No Substantial Federal Question Involved Not Settled by Previous Decisions of This Court

At the outset may we state that we are here confronted by an unfortunate situation not of our own choosing. The appellants, in their "Statement of grounds upon which

it is contended the questions involved are substantial" (Jurisdictional Statement, and Assignment of Errors, Pages 11 to 38, inclusive) have seen fit to discuss in some detail the merits of the case, the substance of the pleadings, answering briefs, reply briefs and *Amicus Curiae* brief, and have included rather copious quotations therefrom. We have in mind the rules of the court which require that pleadings, briefs, etc., must be concise and to the point. It has not been our understanding that the merits of a case can be thus discussed in the Jurisdictional Statement required by Rule 12 of the court, and we are confronted with what appears to us to be an alternative choice of either slight deviation from such rule or of failing to fully refute appellants' position. We sincerely ask that if it appear that our discussion of the question of jurisdiction exceeds that which is customary, consideration be given to our dilemma.

A

The Ordinance Is a Valid Exercise of the Police Power as a System of Registration and Identification

If, for the purpose of this point, we assume without conceding that the petition of appellants is sufficient to present the question of solicitation of money or property for distribution to the needy as an incident of the *practice of religion,* we find no federal question of consequence not heretofore decided by this court.

Although statutes may not undertake to control one's religious beliefs, they may circumscribe the practice of such beliefs.

Cantwell v. *Massachusetts,* 310 U. S. 296, 303;
Davis v. *Beason,* 133 U. S. 333.

The state may prevent acts which tend to interfere with orderly government even though such acts are done in the name of religion.

Cox v. *New Hampshire*, 312 U. S. 569, 575, 576;
Chaplinsky v. *New Hampshire*, 315 U. S. 568, 572;
Prince v. *Massachusetts*, 321 U. S. 158, 169.

The state may protect its citizens from fraudulent solicitations by means of provisions for registration, and regulate the time and manner of solicitations in the interest of public safety, peace, comfort and convenience.

Cantwell v. *Massachusetts*, 310 U. S. 296, 306;
Murdock v. *Pennsylvania*, 319 U. S. 105.

Perhaps the statement in the *Murdock* case, *supra*, might be classed as dicta in view of the fact that the court expressly limited its decision to the power of a state to place a *revenue tax* upon certain religious activities. However, because the statement to which we refer in such decision is consonant with other statements of the court, we think it was not intended as dicta only.

The only method by which we can adequately show that the provisions of the ordinance do not exceed the scope of legitimate exercise of the police power, is by a section-by-section analysis of the ordinance. It will be unnecessary to repeat, with respect to each section, that such section and all portions thereof, except as otherwise specifically provided, is subject to the exemptions in Section 44.16.

Section 44.01 consists of definitions only and has no bearing in this case except as interpretation of words used in other sections.

With respect to Section 44.02, naming the powers of the "Board," we anticipate no Federal question can be raised unless it be with regard to subdivision (c) thereof, which permits recall of cards for correction. If it be a reasonable regulation that solicitors carry identification cards,

it follows that there can be no constitutional objection to a provision which in effect provides that they must be truthfully made out.

Section 44.03 sets forth powers of the "Department" as distinguished from powers which must be performed by the "Board," consisting of five commissioners. If it is proper that the public be protected by being furnished information concerning solicitors and the purpose for which funds are to be used, there can be no objection to an investigation of facts alleged as reasons for such solicitations. Both provisions tend to prevent fraud.

Appellant urges as an element of jurisdiction the possibility that under these provisions the Board might hold up forever the issuance of information cards. Upon the same basis he could argue that because a jailor could refuse to release a prisoner when his sentence expires the law providing for imprisonment in jail is invalid. The bare possibility that an administrative officer can abuse his power is not alone grounds of invalidity. If it were, regulatory laws, such as the licensing of physicians and other professions, and many other laws would be invalid. The acid test is whether there is an unlawful grant of power, and construed as it must be as a grant of power to conduct a reasonable investigation, the provisions constitute reasonable provisions for the prevention of fraudulent solicitations.

In *Yick Wo* v. *Hopkins*, 118 U. S. 356, this court held that actual discrimination in the administration of an ordinance (not otherwise invalid) rendered the ordinance invalid as to those subjected to such discrimination. Farther than this we have not found this court going with any law otherwise valid.

With respect to subdivision (c) of such Section 44.03, authorizing examination of books, we admit that if there be an attempt to examine private papers which have no

tendency to shed light upon the matter of use to which receipts of solicitations are to be put, and other matters germane to the legitimate end to be accomplished, and some State court should construe the provision as permitting unlimited search of private papers, there would be a substantial Federal question arise. Construed as permitting reasonable search the provision is valid, and inasmuch as there are no allegations indicating improper exercise of the provision we should await an interpretation by the State court.

With respect to subdivision (d) of such Section 44.03, it is plain that the cost of supplying information cards is not a revenue scheme in disguise, nor does four cents per card constitute an unreasonable charge. We see no other provision in the section justifying further discussion.

Section 44.04 prohibits fraudulent solicitations. It appears hardly necessary to urge that fraudulent acts may be prohibited. At this point may we note appellants' argument that, because it is possible under other laws to punish the actual commission of fraud, there can be no valid regulation for the prevention of fraud in solicitation of charity. Suffice it to say, that prosecution for crime seldom if ever cures the wounds of the victim. Certainly the State may make reasonable regulations to prevent the practice of fraud.

Section 44.05 requires, as a condition precedent to solicitation, a notice of intention be filed. We take it to be elemental that it is not unreasonable to require one who wishes to benefit by the generosity of others to give information concerning the use to which donations will be put; the use made of previous contributions, and other pertinent information. We think there is no information required which an honest man, be he priest or layman, could object to furnishing. Certainly the fact that someone intent upon engaging in dishonest practices with re-

spect to solicitation or use of funds received, has little standing before the law to complain of the provisions thereof.

Section 44.06 provides for furnishing certain information concerning solicitors. Needless to say, the public has a legitimate interest in knowing whether, out of each dollar given to charity, nipety-five cents is to go into the pocket of the solicitor as his own money and only five cents into the treasury of the charity for which he ostensibly solicits.

Section 44.07 prohibits certain acts, the doing of which would tend to result in fraud and which could serve no legitimate purpose. Such section is well within the limits of the police power regardless of how circumscribed such limits may be.

Section 44.08 provides for the keeping of accounts. In view of the fact that money given to another for use in charity is in the nature of a trust, it cannot well be urged that the State has no power to require provisions for the accounting therefor.

Section 44.09, which is one of the sections immediately involved in the present action, prohibits, in paragraph (a) thereof, solicitation (for charity) of contributions by box or receptacle upon public streets or other public places named. It is a well known fact that solicitation in the manner prohibited has long been a system by which beggars and others of that character have imposed upon the public. The State has a right to protect the public from such imposition. The fact that there may be some persons with honest intentions who wish to use this method does not render the provision invalid.

A State, in order to carry out and effectuate a policy within the police power, may prohibit acts innocuous in themselves if such prohibition is reasonably necessary for the protection of the public.

Purity Extract & Tonic Co. v. *Lynch*, 226 U. S. 192, 201.

Said paragraph (a) does in effect provide that such solicitations may be made by permission of the Board. It being within the police power to entirely prohibit such solicitations for charity, it follows that, inasmuch as that which may be entirely prohibited may be permitted under such conditions as the Sovereign sees fit, so long as there is no discrimination in the granting of permits the provision is not void. There is no evidence or allegation of discrimination against appellants. This provision, like all others in the Article, except Sections 44.01 and 44.04, do not apply to solicitation for solely religious purposes. Whether Murdock was soliciting solely for religious purposes is a question of fact for a trial court.

Paragraph (b) of such Section 44.09 needs no discussion inasmuch as the elements have in effect been discussed in connection with other sections. In addition, we have no claim that Murdock has tried to solicit, or has any future intention of soliciting in the manner therein described.

Section 44.10, which prohibits one from using the name of another without the consent of such other, certainly does no violence to the Federal Constitution.

Section 44.11 is so nearly to the same effect as is Section 44.10 that what has been said of such section applies to Section 44.11.

Section 44.12, another section directly involved in the instant case, provides that solicitors must carry and exhibit an information card. What is more appropriate than a regulation which requires one who wishes to secure a donation to charity from another to properly identify himself and explain the purpose for which the donation is to be used? What more proper than that he present a card truthfully giving such information? The ordinance provides a reasonable and convenient method of securing such cards and does not permit or authorize any city official

to arbitrarily or otherwise deny to anyone an identification or information card upon compliance with the reasonable requirements heretofore discussed. This court has said that one who buys paint, stock food and other substances is entitled to know the constituent elements thereof. Certainly if a provision that a purchaser of goods is entitled to information for his protection, one who is going to part with funds with no return therefor other than the satisfaction of having done a good deed by helping others, is entitled to know to whom he is giving funds and the use to which they will be put. The state, in order to protect the public against imposters, has the power to provide such regulation. In our opinion this regulation comes within the class of those to which no honest man will object, and laws are not made to facilitate the growth of dishonesty.

We believe there is no need to discuss in detail Sections 44.13, 44.14, 44.15, 44.17 or 44.18. The objects and reasons for such sections obviously appear, and such objects are well within police power. Furthermore, there is nothing within the pleadings as we view them (excluding conclusions of fact and law) which tends to indicate a possibility that the appellants have been or will be adversely affected by such sections or any of them.

Likewise, Section 44.16, which consists of exceptions only, requires no discussion.

Section 44.19 regulates "promoters." Promoters are defined in Section 44.01 and in the main the definition corresponds to the commonly accepted meaning. In short, they are persons who enter into a contract whereby, for a percentage of the amount collected or other stated compensation, they agree to conduct a fund-raising campaign for a certain charity. We see no unconstitutional or even unusual situation created by a law which requires such persons to give a bond to insure that the charity will

secure the money subscribed. We see no constitutional objection to a provision which makes it possible to insure that ninety-five cents, or any other unreasonable sum, out of each dollar contributed by a generous public does not go into the pocket of the promoter. This section, like others in the Article under discussion, is subject to the exception that it does not apply to solicitation for solely religious purposes.

The burden of Murdock's plaint, as we see it, is that charity is so much a part of his belief that the requirement of the ordinance which makes it necessary for him to secure an identification card and otherwise comply with the ordinance in order to solicit funds for charity, constitutes a restriction or impairment of his religious freedom.

However broad the field of religious freedom may be, it was never intended by the founders of our country to be a shield for fraud and imposition. That the public has been duped by fraudulent charity schemes is too well known to be successfully denied. That numbers of these schemes have been conducted in the name of religion is, we think, equally well established. So far as we know the appellant Murdock may be perfectly honest in his intentions, and his work worthy of public support.

The fact that one or more persons would conduct honest solicitations is not the yardstick by which we measure police power regulations. If such were true practically all regulatory laws aimed at prevention of fraud upon the public, such as our pure food laws, laws requiring packaging in standard containers, etc., would be invalid as to honest persons and our courts would be devoting their time to determining who were honest and therefore exempt from regulation. The only requirement is that regulation apply equally to all in a given class and that such regulation be not unreasonable. As construed by the highest court of

the State of California the ordinance meets these requirements, and it follows that no substantial federal question exists. Especially is this true in view of the fact that this Honorable Court has said that there can be no objection to a scheme for registration of solicitors. If it be permissible to require solicitors to register, it is only a further reasonable requirement that they prove their identity to persons solicited and inform them of the use to which funds are to be put.

The appellants have discussed at some length the majority and dissenting opinions of the state court. Inasmuch as we deem it our duty to confine our discussion to matters going only to jurisdiction, we consider any discussion of such opinions as outside the limited field to which we are confined, because they would be discussion of the merits of the case. Our silence in this respect, however, is not to be construed as an agreement with appellants' argument.

B

THE CONSTRUCTION PLACED UPON THE STATUTE BY THE SUPREME COURT OF CALIFORNIA IS BINDING UPON THIS COURT

That this court will accept the interpretation placed upon a state statute by the highest court of the state, and will confine its examination to determining whether the statute as thus construed violates the provisions of the Federal Constitution, is now too well settled to admit of argument.

Senn v. *Tile Layers Protective Union*, 301 U. S. 468, 477;

Price v. *Massachusetts*, 321 U. S. 158, 163.

It is unnecessary to discuss in detail the decision of the state court. Suffice it to say that, as construed by such court,

the ordinance does not provide undue restraint upon the practice of religion.

Appellants' chief complaint appears to be of two kinds: (1) Possibility of delay in issuing identification cards, and (2) possibility of discrimination.

Appellants fail to distinguish between laws which permit the arbitrary denial of a right, and laws which permit the exercise of such rights under reasonable regulations, but as an incident to administration of the act give an executive board authority to relax some of the regulations which it is found that public interest requires or justifies such relaxation.

The cases heretofore decided by this court involved statutes in which some administrative authority was given arbitrary power to deny to persons the right to solicit. The ordinance involved in this case is not of that sort. Neither does it involve any religious test as a condition to the right to solicit charity for or by a religious organization or person. They may secure identification cards and solicit upon the same terms as others, and may secure the same exceptions as others. It is a matter of common knowledge in the City of Los Angeles that exceptions to the provisions of paragraph (a) of Section 44.09 have been given only to religious organizations. The provision for waiving the filing of notice of intention is so closely limited by subdivision (1) of Section 44.02 as to permit such waiver only under circumstances which will prevent imposition of fraud upon the public.

Appellants depend upon *Ex parte Dart*, 172 Cal. 47, and it becomes necessary that we correct what is no doubt an inadvertent statement concerning such case (appellants' Jurisdictional Statement and Assignment of Errors, Page 17 Under Section 3 of the ordinance then in effect the Commission could make rules and compliance with such rules

was a condition precedent to securing a permit. The Commission adopted a rule whereby the Salvation Army, as a condition to securing a permit, was required to deed all its property in the city to a local board of trustees, and spend or use within the city all money or articles received upon their solicitation, as well as other conditions with which they could not comply.

The decision of the court in the *Dart* case was based upon (1) the unlawful effect of the rule adopted by the Commission (*Ex parte Dart*, 172 Cal. 47, commencing last paragraph page 42, and ending page 53), and (2) the power of the Commission to deprive a person of the right to solicit for charity "without cause or reason" (*id.* pages 56 and 57). There is no decision that under no circumstances could a permit be required of a religious organization wishing to solicit for charitable purposes. Thereafter a new ordinance was enacted to meet the objections which the court correctly made to the then existing ordinance.

Appellants have mentioned the fact that *Amicus Curiae* brief was filed in the case at bar, but he did not tell the court that it was for and in behalf of not only the Salvation Army, but also thirteen other named organizations, a majority of which are religious organizations.

We appreciate that the fact other religious organizations favor the ordinance does not tend to support or shed light upon the constitutionality thereof. Such fact, however, sheds light upon the thread of argument throughout appellants' statement that, because the court held the ordinance involved in the *Dart* case invalid, the present ordinance should suffer the same fate.

This court has held in *Cantwell* v. *Massachusetts*, 310 U. S. 296, that a general and non-discriminatory regulation, in the public interest, of solicitation, which does not involve

any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. However, the court has not yet defined what constitutes such an ordinance, so drawn as to protect the rights of religion and at the same time protect the rights of the general public. This no doubt because in no case heretofore submitted to your court has there been, as in the ordinance of the City of Los Angeles, a bona fide attempt to balance the rights of all persons affected and afford protection for the public, coupled with the fullest possible right of solicitation compatible with public welfare.

We verily believe that the ordinance of the City of Los Angeles comes well within the limits prescribed by the *Cantwell* case, and that such ordinance not only does not violate any of appellants' rights under the freedom of religion provisions of the Constitution, but also meets the requirements of due process.

This is a proper case for the Honorable Court, upon its own motion, to either affirm the judgment of the state court or dismiss the appeal. The appellee, however, does not make a formal motion to dismiss or affirm.

Respectfully submitted,

RAY L. CHESEBRO,
City Attorney;
DONALD M. REDWINE,
Assistant City Attorney;
JOHN L. BLAND,
Deputy City Attorney,
Counsel for The Municipal Court of the City of Los Angeles, the Appellee.

CHARITIES

L. A. Municipal Code—Ord. No. 77,000

As Amended by Ordinance Nos. 80,920, 81,618, 84,121 and 88,957

Chapter 4

Article 4—Charities and Relief

Sec. 44.01. Definitions:

For the purposes of this Article, the following words are defined and shall be construed as hereafter set forth unless it shall be apparent from the context that they have a different meaning:

"Board" shall mean the Board of Social Service Commissioners;

"Charitable" shall include the words philanthropic, social service, benevolent, patriotic, either actual or purported;

"Contribution" shall include the words alms, food, clothing, money, property or donations under the guise of a loan of money or property;

"Department" shall mean the Department of Social Service;

"Person" [Added by Ordinance No. 80,920, approved March 1, 1939.] shall be construed as defined in Sec. 11.01 of this Code.

"Promoter" [Added by Ordinance No. 80,920, approved March 1, 1939.] shall mean any person who for pecuniary compensation or consideration received, or to be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation or institution, or conducts, manages or carries on or agrees to conduct, manage or carry on or is engaged in the business of or holds himself out as engaged in the business of conducting, managing or carrying on any drive or campaign for any such purpose;

provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article.

"Solicitation" shall mean and include the following:

(1) Any oral or written request;

(2) The distribution, circulation, mailing, posting or publishing of any handbill;

(3) The making of any announcement to the press, over the radio, by telephone or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale or social gathering, which the public is requested to patronize or to which the public is requested to make a contribution for any charitable purpose connected therewith;

(4) The sale of, or attempt to sell, any advertisement, advertising space, book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket or other thing in connection with which any appeal is made for any charitable purpose or the name of any charity, philanthropy or charitable association is used or referred in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will go or be donated to any charitable purpose or association.

A solicitation as defined herein shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any sale referred to in this Article.

Sec. 44.02. Powers of Board:

The Board shall have the following powers:

(a) To publish results of any investigation provided for or authorized in Section 44.03, subdivisions (a), (b) and (c) of this Article;

(b) To give such publicity to any such results by such means as may be deemed best to reach the general public and persons interested;

(c) To waive the whole or part of any provisions of Sections 44.03, 44.05, 44.06, 44.10, 44.11, 44.12, 44.13, 44.15, and 44.02 excepting this subsection, of this Article for the purpose of meeting any extraordinary emergency or calamity;

(d) To request return of Information Cards to the Department upon completion of solicitation for which they are issued or at the expiration of the period for which they are valid;

(e) Upon receipt of additional information which, in the opinion of the Board, shall render incorrect any statement set forth in any such Information Card, the Board shall recall every such Information Card and amend or correct the same or issue in lieu thereof a new Information Card amended or corrected in accordance with such additional information, and that upon receipt of notification to return any Information Card for amendment or correction or new issue, as above provided, the association or person who filed the Notice of Intention for the solicitation for which any such card was issued must present such recalled Information Card to the Department within 48 hours from the time of receipt of said notification;

(f) To waive all conditions of this Article upon application of person filing Notice of Intention, in respect to Information Cards and filing copies of written authorization when a campaign or drive for raising funds for any charitable purpose is given general publicity through the press or otherwise, and when more than twenty-five (25) persons serve as solicitors without compensation, if it shall be proved to the satisfaction of the Board that the publicity concerning the solicitation fully informs the general public

and the persons to be solicited as to the facts required to be set forth on the Information Card.

Sec. 44.03. Powers of Department:

The Department shall have the following powers:

(a) To investigate the allegations of Notice of Intention, or any statement or reports;

(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made;

(c) To investigate at any time the methods of making or conducting any such solicitation;

(d) To issue to all solicitors Information Cards which cards shall show:

(1) That same is issued as information for the public and is not an endorsement;

(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;

(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;

(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made;

(e) To charge a fee for supplying Information Cards, at the rate of four cents per card; provided that when more than twenty-five cards are issued at one time for the same solicitation, the fee for all such cards in excess of twenty-five shall be one cent per card.

Sec. 44.04. Fraud—Solicitation:

No person shall make or perpetrate any misstatement, deception or fraud in connection with any solicitation of any contribution for any charitable purpose.

Sec. 44.05. Charity Solicitation—Notice of Intention:

No person shall solicit, nor shall any officer or member of any association authorize any person to solicit, any con-

tribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person of association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

(a) The purpose of the solicitation and use of the contribution to be solicited;

(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true and correct copy of the original of such resolution by the officer of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to

read and be familiar with all sections of this Article prior to making any such solicitation.

Sec. 44.06. Charity—Solicitor's Agreement—Notice of Intention—Additional Information:

There shall be filed with the Department with such Notice of Intention a statement of any agreement made with any agent, solicitor, promoter, manager or conductor of such solicitation, together with a copy of each agreement which may be in writing. Within twenty-four hours after any change in any such agreement or the making of any new or further agreement, a true copy of such change or agreement, if in writing, or if not, written details thereof shall be filed with the Department. Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however, that the Board, for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or on any association, by at least two officers of such association and shall be open to the inspection of the public.

Sec. 44.07. Name of Solicitor:

No person shall use in soliciting or give to any person whomsoever, either a fictitious name or an alias or any other than his full, true and correct name, or make any such solicitation without at the time of giving to the person solicited his own full, true and correct name, nor shall he impersonate any other person in making such solicitation.

Sec. 44.08. Charitable Associations—Accounting System—Maintenance of:

No person shall solicit any contributions for or on behalf of any charitable association unless such association is maintaining a system of accounting whereby all donations to it and all disbursements made by it are entered upon the books or records of its treasurer or other financial officer.

Sec. 44.09. [As amended by Ordinance No. 84,121, approved Feb. 5, 1941.] Solicitation—Boxes—Receptacles:

(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by the express written permission of the Board.

(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a "notice of intention" as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article.

Sec. 44.10. Charitable Associations—Permission By to Solicit:

No person shall use the name of any association in charge or control of any charitable activity in any solicitation without having written permission from two of the officers of such association, to use its name or the name of or reference to such charitable activity, which written permission must be for a specific event or a specified period of time and a copy of such permission must be filed with the Department prior to any such use.

Sec. 44.11. Charitable Associations—Solicitor—Authorization, Exhibition of:

No person shall solicit in the name of or on behalf of any charitable association unless such solicitor has:

(a) Written authorization of two officers of such association, a copy of which shall be filed with the Department; and which authorization and copy shall each bear a specimen signature of the solicitor; such written authorization shall expressly state on its face the period for which it is valid which shall not exceed ninety days from the date issued;

(b) Such authorization with him when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the Department.

Sec. 44.12. Solicitation—Information Card:

No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person solicited or presents it to said person, for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited.

Sec. 44.13. Solicitation—Radio, Telephone, Telegraph:

No person shall solicit any contributions by printed matter or published article, or over the radio, telephone or telegraph, unless such publicity shall contain the data and information required to be set forth on the Information Card. Provided, that when any solicitation is made by telephone, the solicitor shall present to each person who consents, or indicates a willingness to contribute, prior to accepting a contribution from said person, such Information Card or a true written copy thereof.

Sec. 44.14. Solicitations—Report—Time—Expense—Uses:

Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the

Department, stating the Contributions secured from or as a result of any solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed. Every such report shall be made on forms to be furnished by the Department, and signed by the persons or association filing or obligated to file the Notice of Intention and such report, if made by any such association, shall be signed by at least two officers thereof. Provided, that when any such solicitation is made by any such association such report need be filed only by such association and not by an individual solicitor engaged in any such solicitation.

Sec. 44.15. Contributions—Receipt, Contents of

No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:

(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for.

Provided, however, that no receipt need be given or tendered if donation of money is made by placing of the same in a locked receptacle, of a kind previously approved by the Board, in such manner that it is impracticable to ascertain either the amount donated or the name of the donor, and if an inscription shall be conspicuously attached to such receptacle containing in legible writing a copy of

such Information Card issued by the Department and the statement required to be set forth in the receipt hereinbefore in this Section referred to, except the statements regarding such information card, and if such receptacle bears a number or other mark of identification, and if a written list showing by number the location or name of the solicitor in charge of each receptacle, if there be more than one such receptacle shall have been previously filed with the Department. Provided, further, that no receipt need be given for any donation of money in an amount less than $1.00.

Sec. 44.16. Certain Provisions Not Applicable, When:

The provisions of this Article, except Sections 44.01 and 44.04, shall not be applicable to any solicitation made upon premises owned or occupied by the association upon whose behalf such solicitation is made, nor to any solicitation for the relief of any individual specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected, without any deduction whatever, shall be turned over to the named beneficiary, nor shall they be applicable to any association soliciting contributions solely from persons who are members thereof at the time of such solicitation, nor shall they be applicable to solicitations made solely for evangelical, missionary or religious purposes. Provided, however, that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case.

Sec. 44.17. Soliciting from Vehicles:

No person shall park or stand any vehicle on any street within the Central Traffic District, as said district is defined

in Section 80.00; for the purpose of soliciting funds to any charitable institution, or otherwise.

Sec. 44.18. [Added by Ordinance No. 80,920, approved March 1, 1939.] Telephone Solicitations.

(a) No person shall for pecuniary compensation or consideration conduct or make any solicitation by telephone for or on behalf of any actual or purported charitable use, purpose, association, corporation or institution.

(b) The provisions of Subsection (a) hereof shall not apply to any communication by telephone between persons personally known to each other.

Sec. 44.19. [Added by Ordinance No. 80,920, approved March 1, 1939.]

(1) Promoters.

No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without a license from the Board so to do.

(2) Application.

To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application, the applicant shall set forth, in addition to such information as may be required by the Board:

(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or

if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter.

(3) Bond.

(a) [As amended by Ordinance No. 81,618, approved Sept. 15, 1939.]

At the time of so filing with the Board an application for such license the applicant shall file and thereafter maintain with the Board a good and sufficient bond in the aggregate sum of Two Thousand Dollars ($2,000) running to the City of Los Angeles for the use and benefit of interested persons and parties, executed by the applicant and by two or more responsible sureties, or a surety company authorized to do business in the State of California, to be approved by the Board. The total aggregate liability on said bond shall be limited to the payment of Two Thousand Dollars ($2,000). Said bond shall be conditioned upon the strict compliance, by the Principal, with the provisions of this Article and the payment of any direct pecuniary loss sustained, through any act of grand or petty theft on the part of the Principal, by any donor or by any person on whose behalf the funds or personal property were solicited or received by the Principal.

(b) Said bond shall remain in force and effect until said bond and undertakings in the solicitation of contributions by the promoter is cancelled by the sureties. The sureties may cancel said bond and be relieved of further liability thereunder by delivering thirty days' written notice to the Board. Such cancellation shall not affect any liability incurred or accrued thereunder prior to the termination of said thirty (30) day period.

(c) Any person who sustains any injury covered by said bond, may in addition to any other remedy that he may have, bring an action in his own name upon said bond for the recovery of any damage sustained by him.

(d) Upon such action being commenced, such bond shall not be void upon first recovery thereon, but may be sued upon from time to time until the whole of such penalty shall be exhausted. The Board may, in its discretion, require the filing of a new bond, and immediately upon the recovery in any action on such bond, such promoter shall file a new bond, and upon failure to file the same within ten (10) days in either case, the Board shall forthwith suspend such promoter's license to solicit.

(e) The time within which any action may be brought against a surety upon any bond filed hereunder may, by express provision of the bond to that effect, be limited to a period of two (2) years from and after the discovery, by the person aggrieved, of the act or default complained of.

(4) Fee.

For filing such application the applicant shall pay a fee of $25.00 to the Board.

(5) Investigation.

The Board shall examine such application and shall make such further investigation of the applicant and its or his affairs as the Board shall deem advisable. If from such examination the Board shall be satisfied:

(a) That the applicant is of good character and reputation, or—

That every managing officer or agent of the applicant if the applicant is a corporation, is of good character and reputation, or if the applicant is an unincorporated association, firm or partnership, each member thereof is of good character and reputation.

(b) That applicant has sufficient financial responsibility to carry out the obligations incident to any solicitation such applicant may make within the City of Los Angeles as such promoter and that all of the statements made in such application are and each of them is true and that neither the applicant nor any officer, agent or member of the applicant has violated any of the provisions of this Article or

has engaged in any fraudulent transaction or enterprise, and that the applicant intends to conduct its business fairly and honestly, the Board shall issue to the applicant a license to solicit as a promoter within the City of Los Angeles, contributions. Otherwise, the Board shall deny the application and refuse to issue a license, and shall notify the applicant of the decision of the Board.

Provided, however, that if the only ground for such refusal or denial is such that it does not substantially affect applicant's honesty and integrity and if the inability of the applicant to meet any requirement will not in any way interfere with a proper performance by the applicant of his duties as such promoter, the Board may, in its discretion, waive such ground and grant the application; this proviso relates only to paragraphs (a) and (b) of this subsection.

(6) Revocation.

All licenses issued hereunder shall be subject to the condition that the applicant thereafter shall cease and desist from acting as a promoter within said City of Los Angeles when ordered so to do by the Board if the Board finds after a hearing, upon notice as provided in Section 22.02 of this Code, that any act or omission of such promoter or his agents or employees in making any solicitation or in the conduct of the business of promoter within the City of Los Angeles is unfair, unjust, inequitable or fraudulent. The Board must suspend or revoke any such license if, after hearing upon notice, the Board shall find the existence of any of the grounds hereinabove enumerated for the denial of an application for a promoter's license; provided, however, that such suspension or revocation shall be discretionary with the Board if the only ground for such revocation is such that it does not affect the licensee's honesty and integrity, or his ability properly to perform his duties as a promoter.

(7) Termination.

Every such license shall terminate or expire at the end of the year terminating on the 30th day of June in which such license is issued.

(8) Funds.

No promoter shall commingle any contribution with the promoter's own funds or property, or fail at any time to maintain and keep all contributions separate and apart from the promoter's own funds or property.

(9) [Added by Ordinance No. 81,618, approved Sept. 15, 1939.]

Solicitors.

(a) It shall be unlawful for any promoter to cause or permit any person for pecuniary compensation or consideration received or to be received by such person to solicit or receive on his behalf or at his instigation, under his direction or control or in his employment, any contribution unless such person shall be registered as a solicitor by the Board.

(b) [As amended by Ordinance No. 88,957, approved Dec. 13, 1944.]

Except as provided in Subsections (1) to (8), inclusive, of this section, no person shall for pecuniary compensation or consideration solicit contributions for or on behalf of any other person, charitable association, corporation or institution unless such person be first registered by the Board. No person shall be so registered unless he shall first furnish satisfactory proof to the Board that he is a person of good moral character, that his reputation for honesty is good, and unless he first file with the Board, and thereafter maintain, a bond satisfactory to the Board and approved by the City Attorney in the sum of $500.00, conditioned for the payment of any direct pecuniary loss which may be sustained by any donee or by any person, corporation or association on whose behalf any contribution was solicited or received through any act of grand or petty theft committed by such person.

(c) The provisions of paragraphs (b), (c), (d) and (e) of subsection (3) above shall apply to bonds filed pursuant to this subsection.

(d) The Board shall collect a fee of One Dollar ($1.00) for each such registration.

(e) [As amended by Ordinance No. 88,957, approved Dec. 13, 1944.]

The registrant must notify the Board in writing of any change of address, and if the registrant be employed by more than one person, association, corporation or institution, he must inform the Board in writing of such fact and of any subsequent termination or change of employment.

(f) [Added by Ordinance No. 88,957, approved Dec. 13, 1944.]

Each registration required by this subsection shall terminate at midnight June 30th of each year. Thereafter such registrant shall be re-registered by the Board upon the payment of a fee of $1.00, and the posting of a bond in the sum of $500.00. Such bond shall comply with the requirements of subdivisions (b) and (c) hereof.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 574.

THE RESCUE ARMY, a corporation, and CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES,

Appellee.

APPELLEE'S BRIEF.

RAY L. CHESEBRO,
DONALD M. REDWINE, and
JOHN L. BLAIR,
205 City Hall, Los Angeles 12,
Attorneys for Appellee, The Municipal Court of the

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Exhibit "A." Opinion in People v. Charles Murdock, Cr. A. 1952. April 12, 1943	App. p. 1
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THE RESCUE ARMY, a corporation, and CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES,

Appellee.

APPELLEE'S BRIEF.

Introduction.

This case is, in a measure, a companion case to *The Gospel Army, a corporation, v. The City of Los Angeles, et al.*, Docket No. 103, O. T. 1946, in that it involves the validity of what is sometimes called the "charity solicitation" provisions of the Los Angeles Municipal Code (Ordinance No. 77,000, hereinafter referred to as the Municipal Code or the L. A. M. C.), a code which covers practically the entire field of municipal regulation, including but not limited to occupation taxes, zoning, fire regulations, health laws, building regulations, and licensing of occupations subject to police power regulation.

This case differs from the *Gospel Army* case, however, in the subject matter involved. The former case grew out

of the operation by a corporation of a so-called "industrial" department. The instant case grows out of the solicitation, upon streets and places of public resort, of money without producing and displaying an "information card" as required by the ordinance.

We discussed at some length in the *Gospel Army* case the various provisions of the ordinance involved. We see no reason why we should burden the court in this brief with a repetition of such discussion inasmuch as both cases will be argued at practically the same hour, and no doubt will be considered together by this court as they were by the Supreme Court of the State of California. We shall, therefore, confine ourselves to issues involved in this case not fully covered in our brief in the *Gospel Army* case.

Opinion Below.

The opinion of the Supreme Court of California will be printed in 28 Cal. (2d) at page 460, when that volume comes from the bindery, according to information furnished us by the publishers of the Official Reports of the State of California. At the present time it is printed only in 28 A. C. (Advance California Decisions) at page 475, and in 171 Pac. (2d) 8.

Statement of the Case.

Appellant Murdock was charged in the Municipal Court of the City of Los Angeles with having violated the provisions of Section 44-12 of the Municipal Code, in that he solicited funds for charitable purposes without displaying an information card to persons from whom solicitations were made; also with having violated subdivision

(a) of Section 44.09 of the Municipal Code, in that he solicited for charitable purposes upon the public streets without having a permit so to do. He was tried, convicted, and the judgment reversed because of admission of improper evidence. On the retrial of the case he was convicted, and such conviction was again reversed on the ground of insufficient evidence, the trial deputy acting under a misapprehension of law concerning the evidence necessary to sustain a conviction. The case was again remanded for retrial.

The opinion in each such appeal is printed as Exhibit A (Appendix, p. 1) and Exhibits B (Appendix, p. 2), respectively, in an appendix hereto.

The case was again set for trial in the Municipal Court, whereupon the Rescue Army, a corporation, and Mr. Murdock, who was the defendant in the criminal case, applied to the District Court of Appeal of the State of California for a writ of prohibition, which court denied the application. Thereafter the California Supreme Court removed the petition for writ to its court and granted an alternative writ of prohibition.

At this point we note appellants' criticism of the fact that, in the *Gospel Army* case we introduced, as they term it, evidence not in the record. With respect to our reference to the *Dart* case, 172 Cal. 47, we point out that the record in such case was in the files of the Supreme Court of California and that such court could take judicial notice of the record in that case inasmuch as it was urged by the petitioner there, appellant in the *Gospel Army* case, that the instant case (*Rescue Army* case), as well as the *Gospel Army* case, involved an ordinance having the same inherent evils as were involved in the ordinance in the

Dart case, and that the decision in the *Dart* case should be followed in the instant cases. If we be not mistaken, this court can take judicial notice of that which a lower court can judicially notice, and it was proper for us to refer to facts of record in the *Dart* case.

With respect to the other alleged improper inclusion of statements of fact not included in the record, we deem it unnecessary to here discuss our brief in the *Gospel Army* case. Suffice it to say that, if we inadvertently, on account of an incorrect concept of the field of inquiry by this court, improperly included statements taken from public records, we apologize to the court. We realize full well that this court will not be influenced by statements not within its field of inquiry.

Statement of Questions of Law Involved.

As we view the instant case, the questions of law involved are as follows:

(1) Is an ordinance which requires an identification card as a condition precedent to solicitation for charitable purposes, and which specifically exempts solicitations "made solely for evangelical, missionary or religious purposes" from the regulations provided, invalid as it applies to appellants, and particularly as to appellant Murdock?

(2) Is an ordinance which prohibits solicitation for charity by means of boxes and receptacles without a permit so to do, and which exempts from such prohibition solicitations "made solely for evangelical, missionary or religious purposes," invalid as it applies to the appellants, and particularly as to appellant Murdock?

There are no facts before the court nor allegations in the petition which tend to indicate that appellants have in the past or intend in the future to raise money for any purpose other than by direct solicitation from the public.

Under no view of the pleadings can it be claimed that the appellants urge facts which entitle them to challenge the validity of Section 24.01 of the Municipal Code governing the licensing of secondhand dealers.

Summary of the Argument.

Point I.

THE APPELLANT, THE RESCUE ARMY, A CORPORATION, MAY NOT URGE THE INVALIDITY OF THE ORDINANCE.

Point II.

SECTION 44.12 OF THE LOS ANGELES MUNICIPAL CODE DOES NOT INFRINGE UPON THE RELIGIOUS RIGHTS OF APPELLANT MURDOCK.

Point III.

SECTION 44.09, SUBDIVISION (a) OF THE LOS ANGELES MUNICIPAL CODE IS A VALID EXERCISE OF THE POLICE POWER.

Point IV.

THE CHARITY SOLICITATION ORDINANCE OF THE CITY OF LOS ANGELES DOES NOT IMPINGE ON RELIGIOUS LIBERTY.

ARGUMENT.

POINT I.

The Appellant, the Rescue Army, a Corporation, May Not Urge the Invalidity of the Ordinance.

It is well settled that a corporation may not urge that an ordinance or statute violates the provisions of the First Amendment as incorporated in the Fourteenth Amendment to the Federal Constitution.

Hague v. C. I. O., 307 U. S. 496, 514.

Such corporate appellant, however, apparently now attempts to support its right to challenge the ordinance upon the theory that it has a property right in the collection of money for religious or charitable purposes. We confess our inability to understand the exact theory upon which such claim is based.

The matter of control of charities has been within the protection of the government almost from time immemorial.

Trustees Philadelphia Baptist Ass'n v. Hart's Executors, 4 Wheat. 1;

Vidal, et al. v. Girard's Executors, 2 Howard 127.

If the corporation is engaged in soliciting funds for, and expending them in, charitable enterprises, it is executing one of the highest of trusts. It requires no citation of authorities to show that the administration of trusts is subject to the police power. If, on the other hand, the corporation is engaged in religious activities alone, it may not complain of the ordinance which specifically exempts solicitation for religious purposes (L. A. M. C., Sec. 44.16).

POINT II.

Section 44.12 of the Los Angeles Municipal Code Does Not Infringe Upon the Religious Rights of Appellant Murdock.

We shall assume that appellant Murdock has the right to raise the question of infringement of his religious rights if he was engaged in solicitation for charitable purposes, should his theory be that the practice of charity is part of the practice of religion, although we view his petition as a claim that he was not in any manner soliciting for charitable purposes.

For the purpose of argument, we shall also assume that appellant Murdock was thus engaged in solicitation for charitable purposes. Without such assumption we would place him in a class which is exempted from compliance with the provisions of such ordinance (L. A. M. C., Sec. 44.16).

One not injured by an ordinance may not complain of its provisions.

Utah Power & Light Co. v. Pfost, 286 U. S. 165, 186.

We do not question the right of appellant Murdock to adopt as a tenet of his religion the belief that it is a religious duty to administer charity to the needy. However, the administration of charity is a practice of religion as distinguished from a religious belief.

Although the right to believe, preach and teach one's religious belief is absolute, the right to practice a religious

belief is subject to circumscription in the interest of public welfare.

Reynolds v. U. S., 98 U. S. (8 Otto) 145;
Davis v. Beason, 133 U. S. 333.

Appellant Murdock was charged with having solicited contributions without displaying an information card, such as is required by Section 44.12 of the ordinance. We have pointed out in some detail, in our *Gospel Army* brief, the reason why public interest demands some method of regulation whereby imposters and crooks may not prey on those who are willing to donate to charity. We have likewise pointed out that the information required to be supplied in the statement of information, necessary to be furnished as a condition precedent to engaging in solicitation, requires no disclosure which an honest person could refuse to give. We called attention to the fact that for a quarter of a century those who were interested in collecting funds for charity have not only succeeded in furnishing the required statements but have succeeded in making satisfactory reports of their endeavors; so much so that the official reports of the City of Los Angeles disclose a total collection in excess of thirty million dollars during the first nine months of 1940. We see no need for additional argument herein upon this phase of the question.

A considerable portion of appellants' brief is devoted to quotations from dissenting opinions of various justices of the Supreme Court of California. It hardly appears

necessary to again say that the interpretation placed upon an ordinance by the Supreme Court of a state is the one which this court will consider as the proper instruction of a state legislative act.

Appellants also devote much of their brief to the argument that the Supreme Court of California should have differently interpreted the ordinance. We evaluate their brief as making but little effort to show wherein the ordinance, as construed by the state court, lacks validity. Portions of dissenting opinions of justices of that court are quoted in support of their argument. Some of such quotations, such as the statement of Justice Carter, quoted on page 44 of appellants' brief, that the notice of intention is so complex as to "indicate that its enforcement will doubtless effect the disappearance of all but organized institutions," is wholly unsupported by facts, unless by such statement he intends to include in the term "organized institutions" local units of the Parent-Teachers' Association, Job's Daughters, and hundreds of other community groups which give dances, teas, dinners, etc., to secure funds for charitable uses.

POINT III.

Section 44.09, Subdivision (a) of the Los Angeles Municipal Code Is a Valid Exercise of the Police Power.

Appellant Murdock was also charged with having violated the provisions of subdivision (a) of Section 44.09 of the Municipal Code, which subdivision prohibits the solicitation of funds for charitable purposes by the use of boxes, receptacles, etc., in certain places. Again we call attention to Section 44.16, to point out that solicitation "solely for evangelical, missionary or religious purposes" is not prohibited by such section, even though a box, receptacle, etc., be used.

In addition to the reasons to which the Supreme Court of California has called attention as supporting the validity of this provision, there is another very forceful reason why this section is not only valid but reasonably necessary. As stated, it does not apply to solicitation for religious purposes. That the use of cups, etc. is one of the favorite methods of "pan-handlers" or beggers in the collection of funds for their personal use, is a fact universally known. The question which immediately comes to mind is: May all the beggers in the City of Los Angeles don the coat or cap of some religious order and beg with immunity under such false colors because the city may not question in our courts whether such person intends to use the money so collected for religious purposes, or for some other purpose which is subject to regulation

or prohibition under the police power? It cannot be seriously urged that a municipality cannot prohibit begging upon the public streets.

A state, in order to effectuate a policy within the police power, may prohibit acts innocuous in themselves if such prohibition is reasonably necessary for the protection of the public.

Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192, 201.

The provision of the ordinance under consideration does not work a prohibition of solicitation for charitable purposes upon the streets, etc. A person wishing to solicit in such places may do so if he informs the individual solicited, by means of a proper "information card," of the cause for which and the use of which donations will be applied. Such system of solicitation may be less convenient than the use of tamborines, cups, boxes, or the old-time "passing the hat." However, the hand of the legislature cannot be stayed from enacting laws within the police power by reason of any incidental inconvenience which persons may suffer.

All rights are held subject to the proper exercise of the police power.

Boston Beer Co. v. Commonwealth, 97 U. S. 47 Otto) 25.

There is no claim that the power to suppress solicitation is absolute, as is the power to suppress the sale of

intoxicating liquor, which was the fundamental question in the *Boston Beer* case, *supra,* but the principle of law is the same, and there is here no attempt to entirely suppress solicitation. The only thing which the provision does is to "regulate the * * * places and the manner of soliciting" upon the streets and parks, and in publicly owned buildings. (*Cantwell v. Connecticut,* 310 U. S. 296, 304.) This, and this only, the ordinance does with respect to solicitations for purposes other than religious purposes, leaving persons who are actually soliciting for religious purposes the right to solicit when and where, and by whatever method, they choose. We do insist that when there is reasonable cause to believe that such solicitations are not made in good faith for religious purposes, the courts have jurisdiction to determine, not the good faith of the religious belief of the solicitor, but the *bona fides* of his representation. And we have pointed out in our brief in the *Gospel Army* case, neither the city officials nor its employees are given authority to determine or purport to determine such fact.

It is not the law that he who commits an act is the judge of whether it is lawful. Each of us may perform acts which we think are lawful, but in doing so we assume the risk that some court may in the future find that we were not acting within our legal rights.

Nash v. U. S., 229 U. S. 373, 377.

POINT IV.

The Charity Solicitation Ordinance of the City of Los Angeles Does Not Impinge on Religious Liberty.

The Supreme Court of California, in both the *Gospel Army* case and the *Rescue Army* case, has held that the charity solicitation ordinance of the Municipal Code does not impinge upon one's religious liberty, inasmuch as it exempts from the provisions of such ordinance solicitation "solely for evangelical, missionary or religious purposes."

In view of appellant's insistence upon their claim that the practice of charity is such part of religion as to be beyond the power of the state to regulate, we shall discuss the question in the light of their claim without in any respect conceding either the correctness or validity of such contention. For the purpose of this point, we shall discuss the extent to which the state may regulate the solicitation of funds for religious purposes.

The state may, by general and nondiscriminatory legislation, regulate the times, the places and the manner of soliciting upon its streets. It may in other respects safeguard the peace and good order of the community without unconstitutionally invading the liberties protected by the Fourteenth Amendment. (*Cantwell v. Connecticut, supra*, p. 304.) Certainly protection of the public against fraudulent solicitation comes within the ambit of the police power as fully as does maintaining peace and good order. The general regulation of solicitation, in the public interest, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to constitutional objection even though the collection be for a religious purpose. (*Cantwell v. Connecticut, supra*, p. 305.) Examination of Section 44.05 of

the Municipal Code [R. p. 13, fol. 23] shows that the notice of intention does not constitute a religious test. Neither does the right to secure a permit under Section 44.09, subdivision (a), depend upon a religious test. [R. p. 65, fol. 101.]

The information cards which, as the State Supreme Court points out, are in the nature of permits, are issued automatically upon the completion of the notice of intention. (*The Gospel Army v. City of Los Angeles*, 27 Cal. (2d) 232, 238-239.)

The right to regulate the *place and the manner* of solicitation upon the streets includes the right to prohibit solicitation in certain places, such as congested traffic districts, when certain methods of solicitation are used, if such prohibition be a reasonable method of protecting the public from fraudulent solicitation, such as solicitation by professional beggers disguised as workers in some religious order.

> "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public."
>
> *Cantwell v. Connecticut, supra* (310 U. S. 296), p. 306.

This court has impliedly held that, in connection with a registration ordinance of persons engaged in solicitation of funds, authorities could investigate strangers coming into the community.

Murdock v. Pennsylvania, 319 U. S. 105, 116.

It appears to be a reasonable conclusion that the right to "investigate" connotes the right to take appropriate action after conducting an investigation. Thus, assuming that investigation of a proposed registrant disclosed that he had but recently served a sentence for embezzlement, and that he had a long prior criminal record for similar acts, who would say that under a properly drawn ordinance the city could not refuse him registration, or refuse him a certificate of registration which, in the eyes of the public, would amount to a letter of recommendation? If the authorities, without violating constitutional requirements, could deny such person a permit, the use of effective means less severe but offering reasonable protection to the public, would certainly be permissible.

The City of Los Angeles does not, by its ordinance, permit the Social Service Department of the city to refuse a "permit," but does allow the issuance of a "permit" giving such information as may tend to protect the public.

We maintain that, even if the particular exception in Section 44.16, "solely for evangelical, missionary or religious purposes," were eliminated so as to require registration of and information cards by solicitors for religious purposes elsewhere than in the places and under the circumstances named in Section 44.16, the ordinance would still be a valid exercise of the police power.

An ordinance which prohibited all solicitation by receptacles in specified highly congested districts, and required a permit as a condition to solicit by receptacles in other public places, irrespective of whether such solicitation be for religious or charitable purposes, would be within the police power of the state as defined by the decisions of this court. Certainly the ordinance of the

City of Los Angeles does not go so far as suggested above, and comes well within the power of the state, even though it could be, as appellants insist it should be, construed as applying to solicitation for religious purposes. So long, however, as the particular exception remains in the ordinance, the Municipal Court has jurisdiction to determine whether the solicitations were, in good faith, made for religious purposes. (*U. S. v. Ballard*, 322 U. S. 78.)

Conclusion.

The appellee submits that it has jurisdiction to determine the fact of whether appellant Murdock was soliciting for charitable or other purposes; that the ordinance under such question of fact as presented to the appellee court is valid, and that appellant, The Rescue Army, has no such interest in such prosecution as will enable him to maintain this action in the Honorable Supreme Court of the United States.

The judgment of the Supreme Court of the State of California should be affirmed.

Respectfully submitted,

RAY L. CHESEBRO,
DONALD M. REDWINE, and
JOHN L. BLAND,
Attorneys for Appellee, The Municipal Court of the City of Los Angeles.

APPENDIX.

Exhibit "A."

People v. Charles Murdock, Cr. A. 1952. April 12, 1943. Reversed.

MEMO.
(By the Court)

The defendant on trial in this case was Charles Murdock. The trial developed so that the crucial question was whether or not the solicitation which the defendant admittedly made was limited to religious, home missionary and evangelical purposes. It was error, therefore, to admit, and not to strike, evidence of statements made by Witness Wheeler, not to impeach him, nor to show the defendant's reaction thereto, but for the consideration of the jury on the crucial question. As to that question, the statements were hearsay.

BISHOP,
Acting Presiding Judge.

We Concur.
FOX, *Judge.*
KINCAID, *Judge.*

Exhibit "B."

People v. Charles T. Murdock, Cr. A. 1970 October 25, 1943. Reversed.

Memorandum Opinion
(By the Court)

The defendant was convicted (Count 1) of soliciting contributions on a public street by means of a receptacle, without a permit from the Board of Social Service Commissioners, in violation of section 44.09 of Ordinance No. 77,000 of the City of Los Angeles, and (Count 2) of violating section 44.12 of the said ordinance, by soliciting contributions without exhibiting or reading an information card issued by the Board of Social Service Commissioners. The defendant claims that he was soliciting money for religious purposes, and for that reason, was, by section 44.16 of said ordinance, exempt from the provisions of said two sections. Section 44.16 reads in part: "The provisions of this Article, except sections 44.01 and 44.04, shall not be applicable . . . to solicitations made solely for evangelical, missionary or religious purposes." As to the purposes for which the defendant solicited funds, he testified as follows: "A. Well, when the solicitors come in to our station, that is, at the headquarters, the secretary checks this money out of the tamborines and puts— The Court: So that it is turned over to the church? A. Yes. The secretary uses this money, or the church, at the Board's discretion for whatever they decide; for this to be paid to this minister or for these flowers or funeral, and for this Sunday School— . . . A. For maintaining our churches, for the rents on the property and payments on other property for the church,

and for circulating our Bibles and tracts to soldiers and sailors and marines, and various other activities, and Sunday School and religious work. The Court: For the operation of the church? A. For the operation of the church." The defendant testified that he is the president of the Rescue Army, a religious corporation which maintains three churches and conducts regular religious services. The prosecution made no attempt to rebut testimony introduced to show that the Rescue Army is a bona fide religious organization, nor did it produce any evidence to prove that the defendant was not soliciting funds for religious purposes, or that the funds so received were not devoted to religious purposes. The record, therefore, shows without contradiction that the defendant was soliciting money for religious purposes. Under section 44.16, sections 44.09 and 44.12 of the Ordinance, do not apply to the solicitations which the defendant was making, and the evidence herein is insufficient as a matter of law to sustain a conviction.

This being true, we need not pass upon the constitutionality of the sections of the ordinance in question, because a person may not attack the constitutionality of an ordinance which, in the factual situation before the court, does not apply to him (*People v. Perry* (1931), 212 Cal. 186, 193; *In re Durand* (1935), 6 Cal. App. (2) 69, 70).

The judgment is reversed, and the cause is remanded to the Municipal Court for a new trial.

SWAIN, *Judge.*

We concur.

FOX, *Acting Presiding Judge.*

KINCAID, *Judge.*

SUPREME COURT OF THE UNITED STATES

No. 574.—October Term, 1946.

The Rescue Army, a Corporation, and Charles T. Murdock, Appellants, v. The Municipal Court of the City of Los Angeles. } Appeal from the Supreme Court of the State of California.

[June 9, 1947.]

Mr. Justice Rutledge delivered the opinion of the Court.

On the merits this appeal presents substantial questions concerning the constitutional validity of ordinances of the City of Los Angeles governing the solicitation of contributions for charity. First and Fourteenth Amendment grounds are urged as nullifying them chiefly in the view that they impose prior restraints upon and unduly abridge appellants' rights in the free exercise of their religion. Those rights, as claimed, are to engage in soliciting donations for charity as a part of their religion free from the ordinances' restrictions.

Similar, but also distinct, questions were involved in *Gospel Army* v. *Los Angeles*, dismissed today for jurisdictional reasons. 331 U. S. —. This case, however, arose procedurally in a different fashion, so that it is not subject to the same jurisdictional defect. And the procedural difference is important, not merely for our jurisdiction but also for determining the propriety of exercising it in the special circumstances presented by this appeal.

The California Supreme Court heard and determined the *Gospel Army* case several months in advance of this one. It sustained the regulations in both instances, filing separate opinions in each case. 27 Cal. 2d 232; 28 Cal. 2d 460. But the attack upon the city ordinances in the *Gospel Army* case covered a much wider range than here,

and the court's principal opinion was rendered in that cause. Hence in this case it disposed of overlapping issues merely by reference *a fortiori* to its "approval" of the challenged provisions in the *Gospel Army* opinion.

As will more fully appear, this mode of treatment, together with interlacing relationships between provisions involved here and others in the *Gospel Army* case, has combined with the necessitated dismissal of that appeal to create for us difficult problems in determining exactly how much of the regulatory scheme approved in the *Gospel Army* opinion, and hence also how much of that decision, must be taken as having been incorporated in the disposition of this cause. By virtue of the California court's method of decision, we are largely without benefit of its judgment upon these matters, including possible questions of severability. Consequently, this fact, together with the different jurisdictional postures in which the cases reach this Court, would force us to determine those questions independently before undertaking any decision on the merits.

That necessity and the difficulties tendered by the extricating problem raise substantial questions concerning the disposition appropriate, in the unusual situation, to be made of this appeal. In order to present the problem with a fair degree of precision, it is necessary to state in some detail the nature of the two proceedings, their relationships to each other, and their procedural as well as jurisdictional differences.

I.

This suit is one for a writ of prohibition. The appeal is from the California Supreme Court's judgment denying appellants' application for such a writ. 28 Cal. 2d 460. They instituted the suit in the District Court of Appeal, Second Appellate District, Division Three, of California. Its object was to test the jurisdiction of the respondent Municipal Court of Los Angeles to proceed with a pending

criminal prosecution against Murdock, who is an officer of the Rescue Army. In that court he had been charged with violating three provisions of the city ordinances, had been twice convicted, and twice the convictions had been reversed by the Superior Court of Los Angeles County.[1]

While the case was pending in the Municipal Court after the second reversal, appellants filed their petition in this cause in the District Court of Appeal. Alleging that the Municipal Court was threatening to proceed with a third trial on the same charges, they set forth grounds held sufficient under the state procedure to present for adjudication the question of the Municipal Court's jurisdiction. 28 Cal. 2d at 462–467.

The District Court of Appeal denied the writ. Thereupon the state Supreme Court transferred the cause to its own docket and issued an alternative writ of prohibition pending determination there. As in the *Gospel Army* case, the Supreme Court, with three of the seven justices dissenting, decided the issues on the merits against the appellants. It therefore denied the writ, at the same time discharging the alternative writ. In short effect the ordinances, insofar as they were involved, were sustained as against the constitutional and other objections raised concerning them. Probable jurisdiction was duly noted here, and the cause was assigned for argument immediately following the *Gospel Army* case. 329 U. S. —.

Apparently Murdock was charged in the Municipal Court with violating three sections of the Municipal Code. These were §§ 44.09 (a), 44.09 (b), and 44.12 of Article 4, Chapter IV.[2] Sections 44.09 (a) and (b) formed the

[1] The grounds for reversal in each instance were such as did not determine the cause finally, but resulted in remanding it for further trial. The first reversal was for reception of incompetent evidence; the second, for insufficiency of the evidence to prove violations of the ordinances in question.

[2] Appellants refer to the code as Ordinance No. 77,000. According to appellee's brief, Ordinance No. 77,000 consists of a "revision and codification of the regulatory and penal ordinances of

basis for the first count against Murdock.[3] Colloquially speaking, § 44.09 is a "tin-cup" ordinance. In summary, its two subdivisions, (a) and (b), prohibit solicitations in the specified public places or adjacent areas "by means of any box or receptacle" except, under (a), "by the express written permission of the Board [of Social Service Commissioners]"; under (b), "without first filing with the Department [of Social Service] a 'notice of intention' as required by Sec. 44.05" and, literally, obeying the further command that "every person so soliciting must in all other respects comply with the provisions of this Article."[4] The full text of the section is set forth in the margin.[5]

The second count charged violation of § 44.12 by soliciting without exhibiting or reading to the persons solicited an information card issued by the Los Angeles Board of Social Service Commissioners. Section 44.12 is more general than § 44.09 as to place and manner of solicitation. It is in the following words:

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the City of Los Angeles, to be known as the Los Angeles Municipal Code," and contains nine chapters, I-IX, subdivided into articles, divisions and sections, the latter numbering in excess of 2000.

The brief further states: "The portion of the Los Angeles Municipal Code involved in this proceeding is Article 4 (Charities and Relief) in Chapter IV (Public Welfare) and consists of nineteen sections numbered 44.01 to 44.19, inclusive. However, not all or any considerable number of such sections are actually involved herein, although a complete treatment of the sections primarily involved may require some mention . . . of most if not all of the other sections." Appellants' view, however, is that substantially all of the provisions of §§ 44.01 to 44.19 are incorporated by reference into §§ 44.09 and 44.12 for purposes of determining their constitutional validity.

[3] It is not clear whether the charges under §§ 44.09 (a) and (b) were made in the alternative or conjunctively. See text *infra*, Part IV, following note 43; see also note 42.

[4] The article is Article 4 of Chapter IV. See note 2.

[5] Section 44.09. "(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any public street, sidewalk or way, or in any public park or in any publicly owned or

"No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person solicited or presents it to said person for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited."

Obviously neither § 44.09 (b) nor § 44.12 is self-contained. Each incorporates by reference other sections of the code. Thus, it is necessary to take into account, under § 44.09 (b), the provisions of § 44.05 requiring the filing of the "notice of intention" as well as the omnibus requirement of compliance "in all other respects . . . with the provisions of this Article"; under § 44.12, the requirements of § 44.03 concerning issuance of the information card. Enforcement of § 44.09 (a), which does not refer specifically to other sections, necessarily involves consideration of whatever requirements may relate to securing the board's written permission.

The issue of the Municipal Court's jurisdiction therefore, insofar as it concerns us, turns upon the validity of §§ 44.09 (a), 44.09 (b) and 44.12, together with the other provisions necessarily incorporated in them by reference; and, upon this appeal, their validity not only is relative solely to the effect of the federal constitutional prohibitions, but must be determined in light of the California

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controlled place, except by the express written permission of the Board.

"(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a 'notice of intention' as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article."

Supreme Court's interpretation, including the extent to which other provisions have been incorporated. Moreover the jurisdictional question arises substantially as upon demurrer to the charges, since trial has not been had and the issue concerns only the Municipal Court's power to proceed with the criminal cause. Hence only the validity of the provisions on their face, not as applied to proven circumstances, is called in question.[6]

The *Gospel Army* case, on the other hand, was an injunction suit, in which attack was projected on a broad front against the ordinances and the scheme of regulation they embody as a whole. For some reason § 44.09 (a) was not attacked in that suit. But § 44.09 (b) was involved indirectly through its relation to § 44.05 and § 44.12 directly, as well as numerous other provisions both of Article 4, Chapter IV, and outside it. That article, as we have noted above, consists of Code §§ 44.01–44.19, entitled "Charities and Relief," and thus includes all of the sections involved here as well as many others which were in issue in the *Gospel Army* case.

It is this setting of dovetailed legislative enactments and judicial decisions which creates the primary problem for our disposition. Those interrelations, of the cases and of the ordinances they involve, will be better understood in the setting of a summary of the general scheme.

II.

The Municipal Code regulates both charitable and other solicitations, as well as pawnbrokers, secondhand dealers,

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[6] The California Supreme Court said at the end of its opinion, in relation to appellants' contention that the ordinances are being unconstitutionally applied to them: "The allegations relied upon in support of this contention, however, are denied by the answer and the issues of fact thus presented will not be determined by us in this proceeding." 28 Cal. 2d 460, 473. See *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 14; cf. note 26 *infra*.

junk dealers, etc. The regulations affecting those dealers lie outside Article 4 and became pertinent in the *Gospel Army* case because of that organization's activities in collecting, repairing, selling and giving away used articles.[7] None of those regulations, however, appears to be involved here.[8] The Municipal Court charges, so far as we can now ascertain, relate exclusively to charitable solicitations and consequently are comprehended within Article 4.[9] We therefore are relieved of the necessity for taking account of any of the code provisions outside that article.

Article 4, however, comprehends numerous interrelated sections and subdivisions. They provide a broad and general, though also highly detailed and integrated, plan for regulating solicitations in Los Angeles. The sections here in question are integral parts of that plan.

It is designed primarily, though not exclusively, to secure a maximum of information and publicity for the public. It seeks to make available to all persons solicited detailed information concerning the persons soliciting, the causes or organizations on behalf of which they act, and the uses to which the donations will be put. The plan also undertakes, in other ways, to assure responsibility, both moral and financial, on the part of soliciting individuals and agencies; and to see to it that the funds collected are applied to their appropriate purposes.

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[7] These operations were performed through the Gospel Army's so-called industrial department. For details see the California Supreme Court's opinion, 27 Cal. 2d 232.

[8] No charges in the Municipal Court purported expressly to be grounded upon the provisions of the ordinance dealing with pawnbrokers, secondhand dealers and junk dealers; and §§ 44.09 (a), (b) and 44.12 do not relate explicitly or, it would seem, by necessary implication, upon their face, to such activities.

[9] Not only are §§ 44.09 (a), (b) and 44.12 located within that article but other provisions of the ordinance which they expressly purport to incorporate are so placed.

Machinery for executing the scheme is created through the establishment of a Department of Social Service and a Board of Social Service Commissioners, each with specified administrative powers.[10] Comprehensive and detailed definitions of activities affected and correlative prohibitions are prescribed, together with various provisions for exemption. Violation of the prohibitions, which generally require compliance with one or more other regulations, is made punishable by criminal sanctions.

More narrowly, insofar as the plan is relevant here, any person or association desiring to solicit contributions for a charitable purpose [11] must file with the department, at least ten days before beginning to solicit, a written "Notice of Intention." § 44.05. This is, in substance, an application for the "Information Card" provided for in § 44.03 (d). It will be recalled that § 44.09 (b), in issue here, expressly requires the filing of this notice. And § 44.12, also directly in issue, requires exhibition of the card before solicitation may lawfully take place.

The notice must be filed on a form furnished by the department and must contain the "complete information" specified in the margin.[12] § 44.05. The department is authorized, among other things, to investigate the state-

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[10] See notes 13, 16, and text *infra*.

[11] Section 44.01 defines "charitable" to "include the words philanthropic, social service, benevolent, patriotic, either actual or purported." "Contribution" is defined to "include the words alms, food, clothing, money, property or donations under the guise of a loan of money or property." "Solicitation" is broadly defined to include oral or written requests, and requests made by distributing, mailing or publishing "any handbill," by press announcement, radio, telephone concerning specified types of events, the offering to sell or selling any advertising, book, card, chance, etc., in connection with charitable appeals.

[12] "(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available,

ments contained in the notice and to issue information cards "to all solicitors."[13] § 44.03. Those cards must

figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation." § 44.05.

[13] The department's powers are specified in § 44.03 as follows:

"(a) To investigate the allegations of Notice of Intention, or any statement or reports;

"(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made;

"(c) To investigate at any time the methods of making or conducting any such solicitation;

"(d) To issue to all solicitors Information Cards which cards shall show" the matters set forth below in note 14.

show the detailed matters specified below.[14] *Ibid.* The board is empowered to publish the results of the investigations provided for in § 44.03[15] and to exercise other powers, such as endorsing a soliciting association, waiving specified requirements, and recalling the information cards for correction.[16] §§ 44.02, 44.03. A fee of four cents per

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[14] "(1) That same is issued as information for the public and is not an endorsement;

"(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;

"(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article; [See note 12 *supra*.]

"(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made."

[15] See note 13.

[16] The board's power to endorse charitable associations is conferred by § 44.02. The powers given by § 44.02 are as follows, except for subsection (e) which for brevity is summarized:

"(a) To publish results of any investigation provided for or authorized in Section 44.03, subdivisions (a), (b) and (c) of this Article;

"(b) To give such publicity to any such results by such means as may be deemed best to reach the general public and persons interested;

"(c) To waive the whole or part of any provisions of Sections 44.03, 44.05, 44.06, 44.10, 44.11, 44.12, 44.13, 44.15, and 44.02 excepting this sub-section, of this Article for the purpose of meeting any extraordinary emergency or calamity;

"(d) To request return of Information Cards to the Department upon completion of solicitation for which they are issued or at the expiration of the period for which they are valid;

"[Subsection (e) authorizes the board to recall and amend or correct the information cards on receiving additional information which, in its opinion, renders inaccurate any statement contained in it.]

"(f) To waive all conditions of this Article upon application of person filing Notice of Intention, in respect to Information Cards and filing copies of written authorization when a campaign or drive for raising funds for any charitable purpose is given general publicity

card is charged, when issued, unless more than twenty-five are issued at one time for the same solicitation. In that event the fee becomes one cent per card.

The foregoing regulations apply, on the face of the ordinance, to charitable solicitations as requirements in the nature of conditions precedent, compliance with which is necessary before solicitation may be lawfully made. There are also other requirements which become applicable during and after the act of solicitation. One is that of § 44.15, which commands persons soliciting for charity to tender to each contributor a written receipt containing specified detailed information.[17] And by § 44.14 every such solicitor must file with the department, within thirty days after "the close of any such solicitation" or demand, a report showing the contributions secured and "exactly for what uses and in what manner" they "were or are to be disbursed."

Article 4, moreover, classifies persons soliciting into three groups, two of which are primary, namely, "promoters" and "solicitors." "Solicitors," as will appear, are subdivided into two classes. The regulations bearing upon promoters are more onerous than those touching

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through the press or otherwise, and when more than twenty-five (25) persons serve as solicitors without compensation, if it shall be proved to the satisfaction of the Board that the publicity concerning the solicitation fully informs the general public and the persons to be solicited as to the facts required to be set forth on the Information Card."

[17] In addition to "the amount and kind of the contribution," the receipt must show "substantially" the name of the association aided; a statement whether the contribution is to be applied to its "general purposes" or to special ones and, if the latter, "the nature thereof . . . clearly stated"; that the information card was presented for perusal prior to the making of the contribution. But tender of the receipt is not required if the donation is made, in money, by placing it in a locked receptacle previously approved by the board.

solicitors and are contained in § 44.19, which itself includes numerous subdivisions.[18]

The exact definitive distinction between solicitors and promoters, who may be either institutions or individuals, is not clear from the definitions given in the ordinance,[19] or indeed from the opinions filed in the state

[18] The regulations governing promoters require a license from the Board distinct from or additional to the information card which solicitors must secure, § 44.19 (1); the payment of an $25.00 license fee, § 44.19 (4); the filing of a bond in the sum of $2000 conditioned as specified in § 44.19 (3); and proof to satisfy the board that the applicant is "of good character and reputation" and has "sufficient financial responsibility to carry out the obligations incident to any solicitation such applicant may make." § 44.19 (5). The ordinary solicitor, on the other hand, must secure only the information card, which is in effect a permit; pay the cost of the card; and generally, it would seem, comply with the other requirements heretofore outlined for securing the card.

[19] Section 44.01 defines "promoter" to mean "any person who for pecuniary compensation or consideration received or to be received, *solicits* or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation, or institution, or conducts, manages or carries on or agrees to conduct, manage or carry on or is engaged in the business of or holds himself out as engaged in the business of conducting, managing or carrying on any drive or campaign for any such purpose. . . ." (Emphasis added.)

Section 44.01, entitled "Definitions," contains no definition of "solicitor," but defines "solicitation" broadly, as we have indicated in note 11 *supra*. The meaning of "solicitor" apparently is left therefore to be gathered definitively from the definition of "solicitation" and the use of "solicit" or "solicitor" in the special context of other sections as they become pertinent.

It should be noted that the definition of "promoter" in § 44.01, by including the word "solicits," italicized above, would seem literally broad enough to include any paid solicitor of contributions "for or on behalf of any other person" or charitable organization, and thus to include all solicitors except wholly voluntary ones. This seems to have been Justice Carter's view as expressed in his dissent in the *Gospel Army* case, 27 Cal. 2d 232, 266. However, other sections indicate

court.[20] But, so far as we can gather, the promoter differs from the solicitor, generally at any rate, as being one who engages in solicitation as a business or by exercising a managerial or supervisory capacity over other persons acting as paid solicitors under his direction or pursuant to a program in his charge.[21]

Section 44.19 also regulates the relations between promoters and paid solicitors associated with them. A promoter is forbidden by § 44.19 (9) (a) to cause or permit any person for compensation "to solicit or receive on his behalf or at his instigation, under his direction or control or in his employment, any contribution unless such person shall be registered as a solicitor by the Board." And the next subsection requires the registered solicitor to prove his good moral character and reputation for honesty, to file a $500 bond, and to pay a $1.00 registration fee. § 44.19 (9) (b), (d).

Section 44.19 thus apparently is effective to create two classes of solicitors, namely, registered and unregistered, as well as the distinction between promoters and solicitors; and establishes special and more burdensome conditions for lawful solicitation by registered solicitors, as well as by promoters, than are created for solicitors not required to be registered.

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that solicitors may be paid as well as voluntary without becoming promoters. See § 44.19 (9). And see note 20. Murdock apparently receives compensation for his services as an officer of the Rescue Army.

[20] In the *Gospel Army* case the record shows that all the solicitors were paid upon a percentage basis. Nevertheless, the court dealt in its opinion with the provisions governing solicitors as well as promoters, thus indicating apparently that in its view the difference was other than that solicitors are voluntary workers and promoters are paid. The ordinance and the state court's opinions, more especially in the *Gospel Army* case, appear to treat the two groups as distinct and not merely overlapping in relation to persons themselves engaged in direct solicitation.

[21] See notes 19 and 20.

Finally, without detailed elaboration, numerous regulations in addition to or interwoven with those relating to solicitors of both types and to promoters govern the organizations or charities on whose behalf the solicitations are made.[22]

The foregoing summary is perhaps more than sufficient to show the comprehensive nature of the plan and the intricately interlacing relationships of the numerous provisions of Article 4 making up the general scheme in which §§ 44.09 (a), (b) and 44.12 find their context and setting. Some no doubt could be applied independently, perhaps for example § 44.09 (a).[23] But others are interwoven with one or more distinct provisions to specify essential constituent elements. And in many instances the provisions so imported require or suggest still fur-

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[22] Specific and highly detailed records and reports must be made of contributions received, of expenditures, and of other matters. §§ 44.08, 44.14. Written and corporately authenticated authorizations must be issued. §§ 44.10, 44.11. Indeed compliance with such requirements as those relating to filing the notice of intention under § 44.05 and procuring the information card under § 44.03 for use by persons acting for the charity forces organizational conformity as much as individual. And by departmental regulation, apparently, fifty per cent of all contributions received must be applied to the charitable purpose rather than to expenses of collection or promotion.

[23] The subsection is one of the few not referring to other provisions of the article or the code. None of them contains any specification of conditions for securing the board's written permission. Cf. note 5. The California Supreme Court, however, supplied them in the following language: "We conclude, therefore, that if subdivision (a) of section 44.09 is read, as it must be, in light of the purpose and context of the entire ordinance, on the one hand, and the peculiar circumstances attendant upon collections by means of receptacles in public places, on the other hand, that the denial of a permit is warranted only if the information furnished to the board discloses fraud or if the solicitation as planned would interfere with the public convenience and safety." 28 Cal. 2d at 471–472.

It becomes unnecessary, however, to consider the validity of possible independent application of § 44.09 (a), for reasons to be stated. See text *infra* Part IV, following note 43.

ther reference to additional ones. The article is in fact a web of intricately dovetailing references and cross-references.

Thus, with respect to the sections involved here, § 44.12 requires exhibition of the information card provided for in § 44.03. This in turn forces reference to § 44.05, which specifies the conditions for securing the card. And fulfillment of those conditions may compel resort to still other provisions. The same process must be gone through with respect to § 44.09 (b). For while that section differs verbally from § 44.12 in that it specifically requires only the filing of the notice of intention, not issuance or exhibition of the information card, not only is the procedure for filing the notice highly detailed and largely set forth in other sections. It is also highly doubtful, in view of the California Supreme Court's decision, whether persons so complying and filing the notice would be authorized by that act alone to proceed with lawful solicitation under § 44.09 (b), without waiting the specified ten-day period (§ 44.05) and undergoing the investigations prescribed by § 44.03 or perhaps actually procuring the card.[24]

It is necessary, in order to complete the environment of the problem presented by the appeal, to set forth somewhat more fully the manner in which the California Supreme Court dealt with §§ 44.09 (a), 44.09 (b) and 44.12, and related provisions. This, however, may best be deferred at this point, in order to state the legal principles which we think are controlling of our disposition.

III.

The *Gospel Army* case we have dismissed for the technical, nevertheless important, reason that under California law the state Supreme Court's reversal, without more, contemplates further proceedings in the trial court. Consequently that judgment is not final for the purposes of our

[24] See text *infra* Part IV, *circa* note 50.

jurisdiction on appeal, within the meaning of § 237 (a) of the Judicial Code, 28 U. S. C. § 344 (a). 331 U. S. —.

On the other hand, this appeal is not subject to that particular infirmity. The effect of the California Supreme Court's judgment, of course, will be to permit further proceedings by the Municipal Court. But under the rule of *Bandini Co.* v. *Superior Court*, 284 U. S. 8, this prohibition proceeding would be an independent suit, in relation to that criminal prosecution, "and the judgment finally disposing of it," as did the state Supreme Court's judgment, "is a final judgment within the meaning of Section 237 (a) of the Judicial Code." 284 U. S. at 14.[25]

The *Bandini* case, like this one, was a prohibition proceeding brought in a California District Court of Appeal. Its object was to determine the jurisdiction of a state Superior Court in an equity cause. That suit had been brought by the state Director of Natural Resources to enjoin alleged unreasonable waste of natural gas, pursuant to the Oil and Gas Conservation Act of California. A preliminary injunction issued in the Superior Court. Thereupon the writ of prohibition was sought to restrain the enforcement of the order, and of the Act, which was attacked under the Fourteenth Amendment on due process and equal protection grounds. The writ was denied, as was hearing by the California Supreme Court. Upon appeal here this Court sustained its jurisdiction and determined the constitutional issues presented upon the face of the statute,[26] affecting the Superior Court's jurisdiction, adversely to the appellants' contentions.

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[25] The following authorities were cited and relied upon: *Weston* v. *Charleston*, 2 Pet. 449, 464; *Mt. Vernon Cotton Co.* v. *Alabama Power Co.*, 240 U. S. 30, 31; *Missouri ex rel. St. Louis, B. & M. R. Co.* v. *Taylor*, 266 U. S. 200, 206; *Michigan Central R. Co.* v. *Mix*, 278 U. S. 492, 494.

[26] Referring to the state court's denial of the writ, the *Bandini* opinion stated: "That judgment, however, merely dealt with the jurisdiction of the Superior Court of the suit for injunction, and the

The *Bandini* ruling is well settled.[27] Apparently, however, it has been applied to a proceeding in prohibition relating to a criminal prosecution in but a single case, *Plessy* v. *Ferguson*, 163 U. S. 537, without discussion. On the other hand, a close, indeed it would seem a complete, analogy is to be found in *Bryant* v. *Zimmerman*, 278 U. S. 63. In that case Bryant had been charged criminally in the courts of New York with violating that state's so-called anti-secret organization statute, and was held in custody for trial pursuant to that charge. He instituted *habeas corpus* proceedings in the state courts, on the ground that "the warrant under which he was arrested and detained was issued without any jurisdiction, in that the statute which he was charged with volating was unconstitutional." 278 U. S. at 65. Upon appeal from the state court's denial of the writ, this Court with one justice dissenting entertained the appeal and held the statute valid.

Although the jurisdictional inquiry, in the state courts and here, was conducted in the separate proceeding on *habeas corpus*, unlike the *Bandini* case it related to a criminal cause, as does this case. And for the purposes of our jurisdiction under § 237 (a) of the Judicial Code, a distinction would seem to be wholly verbal between such an inquiry and its disposition made under the state procedure of *habeas corpus* and a similar one made in a state pro-

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only question before us is whether the District Court of Appeal erred in deciding the federal questions as to the validity of the statute upon which that jurisdiction was based. Moreover, with all questions of fact, or with questions of law which would appropriately be raised upon the facts adduced in the trial of the case in the Superior Court, as a court competent to entertain the suit, we are not concerned on this appeal." 284 U. S. at 14. ". . . the District Court of Appeal must be regarded, as its opinion imports, as having determined merely that the statute was valid upon its face so that the Superior Court had jurisdiction to entertain the injunction suit. It is that determination alone that we can now consider." 284 U. S. at 15-16.

[27] See the authorities cited in notes 25 and 28.

ceeding for a writ of prohibition.[28] Those procedures, of course, have their historic differences, both in availability and in specific function, at the common law. But when they are utilized, under state authorization, substantially for the identical purpose of questioning the validity of state statutes under the federal constitution, as determinative of the jurisdiction of state courts to proceed with criminal prosecutions based on those acts, it would seem difficult to find any substantial difference between them relative to this Court's jurisdiction to review their determinations. This assumes, of course, that the judgment reviewed under one name or the other would be such as finally disposes of the proceeding.

While therefore we are unable to conclude that there is no jurisdiction in this cause, nevertheless compelling reasons exist for not exercising it.

From *Hayburn's Case*, 2 Dall. 409, to *Alma Motor Co.* v. *Timken-Detroit Axle Co.* and the Hatch Act case decided this term,[29] this Court has followed a policy of strict necessity in disposing of constitutional issues. The earliest exemplifications, too well known for repeating the history here, arose in the Court's refusal to render advisory opinions and in applications of the related jurisdictional policy drawn from the case and controversy limitation. U. S. Const., Art. III. The same policy has been reflected continuously not only in decisions but also in rules of

[28] In *Holmes* v. *Jennison*, 14 Pet. 540, the Court held that an order of a state court of last resort refusing to discharge a prisoner upon *habeas corpus* was a final judgment subject to review. In reaching that conclusion Taney, C. J., relied upon *Weston* v. *Charleston*, 2 Pet. 449, as "decisive." That decision, rendered by Marshall, C. J., held for the first time that the denial of a writ of prohibition was a final judgment. See also *Largent* v. *Texas*, 318 U. S. 418, where the Court cites both *Bandini Co.* v. *Superior Court*, 284 U. S. 8, and *Bryant* v. *Zimmerman*, 278 U. S. 63.

[29] *Alma Motor Co.* v. *Timken-Detroit Axle Co.*, 329 U. S. 129; *United Public Workers* v. *Mitchell*, 330 U. S. —.

court and in statutes made applicable to jurisdictional matters, including the necessity for reasonable clarity and definiteness, as well as for timeliness, in raising and presenting constitutional questions.[30] Indeed perhaps the most effective implement for making the policy effective has been the certiorari jurisdiction conferred upon this Court by Congress. E. g., Judicial Code, §§ 237, 240.

The policy, however, has not been limited to jurisdictional determinations. For, in addition, "the Court [has] developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision." [31] Thus, as those rules were listed in support of the statement quoted, constitutional issues affecting legislation will not be determined in friendly, nonadversary proceedings; in advance of the necessity of deciding them; in broader terms than are required by the precise facts to which the ruling is to be applied; if the record presents some other ground upon which the case may be disposed of; at the instance of one who fails to show that he is injured by the statute's operation, or who has availed himself of its benefits; or if a construction of the statute is fairly possible by which the question may be avoided.[32]

Some, if not indeed all, of these rules have found "most varied applications." [33] And every application has been

[30] See, *e. g.*, as to appeals from state courts, § 237 (a) of the Judicial Code, 28 U. S. C. § 344 (a), Rule 12 (1) of the Revised Rules of the Supreme Court of the United States; *Honeyman* v. *Hanan*, 300 U. S. 14.

[31] Brandeis, J., with whom Stone, Roberts and Cardozo, JJ., concurred, in *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, concurring opinion at 346.

[32] *Id.*, at 346–348, and authorities cited. See also *Coffman* v. *Breeze Corp.*, 323 U. S. 316, 324–325.

[33] For example, with reference to the rule forbidding decision of properly presented constitutional questions, if the case may be dis-

an instance of reluctance, indeed of refusal, to undertake the most important and the most delicate of the Court's functions, notwithstanding conceded jurisdiction, until necessity compels it in the performance of constitutional duty.

Moreover the policy is neither merely procedural nor in its essence dependent for applicability upon the diversities of jurisdiction and procedure, whether of the state courts, the inferior federal courts, or this Court. Rather it is one of substance,[34] grounded in considerations which transcend all such particular limitations. Like the case and controversy limitation itself and the policy against entertaining political questions,[35] it is one of the rules basic

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posed of on another ground: "Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. *Siler* v. *Louisville & Nashville R. Co.*, 213 U. S. 175, 191; *Light* v. *United States*, 220 U. S. 523, 538. Appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground. *Berea College* v. *Kentucky*, 211 U. S. 45, 53." 297 U. S. at 347.

[34] "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Spector Motor Service* v. *McLaughlin*, 323 U. S. 101, 105. It has long been the Court's "considered practice not to decide abstract, hypothetical or contingent questions . . . or to decide any constitutional question in advance of the necessity for its decision . . . or to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied . . . or to decide any constitutional question except with reference to the particular facts to which it is to be applied. . . ." *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 461. "It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case." *Burton* v. *United States*, 196 U. S. 283, 295.

[35] Which has had application in appeals and on writs of error, as well as in cases arising under the certiorari jurisdiction. See *Luther*

to the federal system and this Court's appropriate place within that structure.[36]

Indeed in origin and in practical effects, though not in technical function, it is a corollary offshoot of the case and controversy rule. And often the line between applying the policy or the rule is very thin.[37] They work, within their respective and technically distinct areas, to achieve the same practical purposes for the process of constitutional adjudication, and upon closely related considerations.

The policy's ultimate foundations, some if not all of which also sustain the jurisdictional limitation, lie in all that goes to make up the unique place and character, in our scheme, of judicial review of governmental action for constitutionality. They are found in the delicacy of that function, particularly in view of possible consequences for others stemming also from constitutional roots; the comparative finality of those consequences; the consideration due to the judgment of other repositories of constitutional power concerning the scope of their authority; the neces-

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v. *Borden*, 7 How. 1; *Pacific States Tel. & Tel. Co.* v. *Oregon*, 223 U. S. 118; *Ohio ex rel. Davis* v. *Hildebrant*, 241 U. S. 565; opinion of FRANKFURTER, J., in *Colegrove* v. *Green*, 328 U. S. 549.

[36] Like the policy about political matters, although not going to jurisdiction as that policy does, it is a rule "which cannot be met by verbal fencing about 'jurisdiction.'. It must be resolved by considerations on the basis of which this Court, from time to time, has refused to intervene in controversies." Opinion of FRANKFURTER, J., in *Colegrove* v. *Green*, 328 U. S. 549, 552.

[37] Indeed more than once the policy has been applied in order to avoid the necessity of deciding the "case or controversy" jurisdictional question, when constitutional issues were at stake on the merits, *e. g.*, recently in declaratory judgment proceedings. See *American Federation of Labor* v. *Watson*, 327 U. S. 582; *United Public Workers* v. *Mitchell*, 330 U. S. —. Compare *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, and *Congress of Industrial Organizations* v. *McAdory*, 325 U. S. 472, which arose under state declaratory judgment acts.

sity, if government is to function constitutionally, for each to keep within its power, including the courts; the inherent limitations of the judicial process, arising especially from its largely negative character and limited resources of enforcement; withal in the paramount importance of constitutional adjudication in our system.

All these considerations and perhaps others, transcending specific procedures, have united to form and sustain the policy. Its execution has involved a continuous choice between the obvious advantages it produces for the functioning of government in all its coordinate parts and the very real disadvantages, for the assurance of rights, which deferring decision very often entails. On the other hand it is not altogether speculative that a contrary policy, of accelerated decision, might do equal or greater harm for the security of private rights, without attaining any of the benefits of tolerance and harmony for the functioning of the various authorities in our scheme. For premature and relatively abstract decision, which such a policy would be most likely to promote, have their part too in rendering rights uncertain and insecure.

As with the case and controversy limitation, however, the choice has been made long since. Time and experience have given it sanction. They also have verified for both that the choice was wisely made. Any other indeed might have put an end to or seriously impaired the distinctively American institution of judicial review.[38] And on the whole, in spite of inevitable exceptions, the policy has worked not only for finding the appropriate place and function of the judicial institution in our governmental system, but also for the preservation of individual rights.

[38] It is not without significance for the policy's validity that the periods when the power has been exercised most readily and broadly have been the ones in which this Court and the institution of judicial review have had their stormiest experiences. See *e. g.*, Brant, Storm Over the Constitution (1936).

Most recently both phases of its operation have been exemplified in declaratory judgment proceedings.[39] Despite some seemingly widespread misconceptions,[40] the general introduction of that procedure in both state and federal spheres has not reversed or modified the policy's general direction or effects.[41]

One aspect of the policy's application, it has been noted, has been by virtue of the presence of other grounds for decision. But when such alternatives are absent, as in this case, application must rest upon considerations relative to the manner in which the constitutional issue itself is shaped and presented.

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[39] See the authorities cited in note 37 *supra*. Cf. *Coffman* v. *Breeze Corp.*, 323 U. S. 316, 324.

[40] As the cases cited in note 37 illustrate, the procedure has been utilized to bring for decision challenges to an entire array of statutory provisions alleged to violate rights secured by an almost equal array of constitutional provisions. The strategic conception seems to have been that the declaratory judgment suit furnishes a ready vehicle for presenting and securing decision of constitutional matters, solely upon the pleadings, in highly abstract or premature, if not hypothetical states of fact, and *en masse*. Such a notion of course is essentially contradictory of the policy and, if accepted, would go far toward nullifying it.

[41] By dispensing with the necessity of asking for specific relief beyond that afforded by adjudication itself, it is true, the occasions for applying the policy through grounding decision upon failure to satisfy remedial limitations have been avoided. But, as sloughing off those limitations has not, and of course could not, overcome the case and controversy requirement, no more was this intended to discard the corollary policy effective within the limits of conceded jurisdiction.

Indeed the discretionary element characteristic of declaratory jurisdiction, and imported perhaps from equity jurisdiction and practice without the remedial phase, offers a convenient instrument for making the policy effective, quite to the contrary effect of the conception discussed in note 40 above. But that element, for application of the policy, is only one of convenience, not one of necessity. No more is application dependent upon it, essentially, than upon

These cannot be reduced to any precise formula or complete catalogue. But in general, as we have said, they are of the same nature as those which make the case and controversy limitation applicable, differing only in degree. To the more usual considerations of timeliness and maturity, of concreteness, definiteness, certainty, and of adversity of interests affected, are to be added in cases coming from state courts involving state legislation those arising when questions of construction, essentially matters of state law, remain unresolved or highly ambiguous. They include, of course, questions of incorporation by reference and severability, such as this case involves. Necessarily whether decision of the constitutional issue will be made must depend upon the degree to which uncertainty exists in these respects. And this inevitably will vary with particular causes and their varying presentations.

Accordingly the policy's applicability can be determined only by an exercise of judgment relative to the particular presentation, though relative also to the policy generally and to the degree in which the specific factors rendering it applicable are exemplified in the particular case. It is largely a question of enough or not enough, the sort of thing precisionists abhor but constitutional adjudication nevertheless constantly requires. And it is this kind of question that the declaratory judgments procedure has facilitated in presentation, a consequence which dictates the greatest care in seeing that it be not utilized so as to become a means for nullifying the policy.

Much the same thing may be said for the state procedure in prohibition as it has been followed in this case. Indeed, in all but name the two procedures are substantially identical, for the purposes of our jurisdiction and function

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the similar element in other types of suit, as for example in suits for injunctive relief. Cf. *Spector Motor Service* v. *McLaughlin*, 323 U. S. 101.

in review. Here relief is neither sought nor needed beyond adjudication of the jurisdictional issue. The suit seeks only, in substance, a judicial declaration that jurisdiction does not exist in the Municipal Court. But for a variety of reasons the shape in which the underlying constitutional issues have reached this Court presents, we think, insuperable obstacles to any exercise of jurisdiction to determine them.

Those reasons comprise not only obstacles of prematurity and comparative abstractness arising from the nature of the proceeding in prohibition and the manner in which the parties have utilized it for presenting the constitutional questions. They also include related considerations growing out of uncertainties resulting from the volume of legislative provisions possibly involved, their intricate interlacing not only with each other on their face but also in the California Supreme Court's disposition of them, and especially from its treatment of this case by reference in considerable part to the *Gospel Army* case, difficulties all accentuated for us of course by the necessity for dismissal of that cause here. Because the application of the policy must be relative to the factors specifically dictating such action, a statement of our particular reasons follows.

IV.

In the first place, the constitutional issues come to us in highly abstract form. Although raised technically in the separate proceeding in prohibition, they arise substantially as upon demurrer to the charges against Murdock in the criminal proceeding. The record presents only bare allegations that he was charged criminally with violating §§ 44.09 (a), 44.09 (b) and 44.12, and that those sections are unconstitutional, on various assignments, as applied to his alleged solicitations. We are therefore without benefit

of the precision which would be afforded by proof of conduct made upon trial. Moreover, we do not have the benefit on this record of even the literal text of the charges.[42] Indeed, the summarized statement of the pleadings leaves us in doubt whether there were only two or, on the other hand, three distinct offenses charged.[43]

The pleadings seem to allege that Murdock was charged with violation of three different provisions of Article 4, namely, §§ 44.09 (a), 44.09 (b) and 44.12. Yet they allege equally clearly that there were only two counts. The second rested, as we have said, on § 44.12. But from the state of the pleadings we cannot be sure whether the first was grounded on § 44.09 (a), on § 44.09 (b), or on both and, if the latter, whether conjunctively or alternatively.

The California Supreme Court's decision purported to deal with both. But the opinion did not discuss the anomaly of including two distinct charges in a single count. Nor did it decide whether that count was intended to charge two such offenses independently, one under each subdivision, or only commission of those offenses alternatively, that is, either an offense under § 44.09 (a) or one under § 44.09 (b) in order, possibly, to anticipate contingencies of proof.

We might assume either one construction or the other, of course, and make our disposition accordingly. Perhaps the more tenable assumption would be that Murdock was charged conjunctively under both subdivisions, rather than that he was confronted with an alternative allegation.

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[42] It is alleged in the petition for the writ of prohibition that Murdock was charged with having violated §§ 44.09 and 44.12 of the Municipal Code "in that, as it is charged in said complaint, Court [sic] I thereof, said Murdock solicited contributions, and in Court [sic] II thereof, that said Murdock had no permit or Information Card, and failed to show the same to a person solicited by said Murdock. . . ."

[43] See note 3, *supra*.

But the doubt raised concerning this, by conjunction of the charges in a single count, is substantial; the matter is, for present purposes, entirely one of state procedure and state law; and therefore is one for the state court of last resort to resolve. In these circumstances we are unwilling to undertake clarifying the ambiguity. To do so would be directly contrary to the policy of avoiding constitutional decisions until the issues are presented with clarity, precision and certainty.

The two subdivisions, while complementary in regulating solicitation by receptacles, are entirely distinct not only in the places where the regulations apply, but also in the conditions prescribed to be fulfilled before lawful solicitation may take place. Those differences are substantial; not merely nominal or technical.[44] With the possibility presented by the record that only one or the other provision may be involved in the final disposition of the criminal proceeding, as a matter of pleading and proof and not simply of the jury's action, it is entirely too speculative whether one sort of regulation or the other actually will be utilized to secure Murdock's conviction for us to express opinion at this stage on the constitutionality of either. For the same reason we are unwilling to determine the validity of both, notwithstanding the California court has held each valid. That decision on our part, consistently with the policy, should await the determination which necessarily will be made in the further proceedings in the Municipal Court, whether Murdock has been charged independently or alternatively under the two subsections in the first count.

Other reasons relating particularly to § 44.09 (b) sustain this conclusion. In the first place, the California court's opinions give us no guide concerning the effect of that section's concluding omnibus clause, requiring compliance "in all other respects . . . with the provisions

[44] See note 5 *supra*.

of this Article." Whether or not that court, treating the section independently as we must do,[45] would regard it as effective to incorporate all or only some of the many provisions of Article 4, and in the latter event how many, are matters upon which we are altogether without light. And those questions, being matters of state law, are essentially for the state court's determination, not ours.

They are moreover substantial. As we have shown, the requirements of Article 4 concerning lawful solicitation are many and varied. Presumably, though by no means certainly, the special ones of § 44.19, relating to promoters and registered solicitors, would not become applicable under a general charge made pursuant to § 44.09 (b). But a literal application of the concluding language of § 44.09 (b) would make them so, upon proof of violation. And, in that event, Murdock conceivably could be convicted upon proof of his failure to pay the substantial license fees, give the bonds, or otherwise comply with the more burdensome provisions of § 44.19, even though he had fulfilled the explicit command of § 44.09 (b) for filing the notice of intention as required by § 44.05 and, indeed, all other requirements of Article 4 outside § 44.19.

Whether the charge under § 44.09 (b) comprehends failure to comply with all of the conditions of Article 4 or only some of them, and if the latter which ones, depends on whether the omnibus clause is to be literally applied, disregarded entirely,[46] or possibly construed in some modi-

[45] That is, independently of the entire scheme considered as a valid plan of regulation in all its parts, as the California court substantially considered it in the *Gospel Army* case. Dismissal of that appeal, of course, forbids expression by us of any opinion upon the merits of the issues as involved in that presentation, aside from those necessarily incorporated in the decision of this cause.

[46] Under the familiar but not invariably applied rule of *ejusdem generis*. See, e. g., *Los Angeles* v. *Superior Court*, 2 Cal. 2d 138, 140; *Pasadena University* v. *Los Angeles County*, 190 Cal. 786, 790; *In re Johnson*, 167 Cal. 142, 145.

fied way involving neither of these extremes. This Court certainly has no proper function to undertake such a task of interpretation. Apart from invading the state court's function, the problem of extricating the applicable provisions from such a mass, together with matters of severability likely to arise, would be formidable. And when discharged the result might be merely that we had performed it and determined the constitutional issues so presented, only to find that in the further proceedings to be had in the Municipal Court our interpretation had been put aside in favor of another.

Moreover that cause hardly can proceed to final decision without clarification of the charge, or making clarification unnecessary. Murdock's rights thus can be assured of protection, even though at the trouble and expense of undergoing another trial. Those inconveniences, concededly substantial, do not outweigh the strong considerations relative to this Court's functions dictating that it should not undertake a task at once so speculative and so foreign to them.

Somewhat less obviously, similar difficulties are presented for dealing with the more specific requirement of § 44.09 (b) for filing the notice of intention and the related one of § 44.12 for procuring and exhibiting the information card.[47] Simply upon the face of the ordinance (Article 4), we would construe these provisions as excluding all reference to the licensing requirements of § 44.19, as well as the regulations relating to dealers in used articles, junk, etc.,[48] as indeed the California Supreme Court's opinion seems to exclude them. In such a view the charges under § 44.09 (b) (without reference to the omnibus concluding clause) and § 44.12 would be restricted to failure to comply with whatever provisions of §§ 44.01–44.18 may be incor-

[47] See note 5 *supra* and § 44.12 as quoted above in the text, Part I.

[48] See text *supra* Part II.

porated by reference in those two sections. Presumably also, within that range, would be excluded all requirements applicable only after the act of solicitation, such as those for keeping records and making reports of the receipt and disposition of contributions received, §§ 44.09, 44.14, cf. also § 44.08, and perhaps though not at all certainly (as to the charge under § 44.12)[49] the tendering at the time of solicitation of the receipt required by § 44.15. Possibly therefore a fair construction of the charges under §§ 44.09 (b) and 44.12 would be that they are limited, so far as concerns incorporation of other provisions, to including the licensing requirements of §§ 44.05 and 44.03, themselves extensive and highly detailed, which so far as we can gather from the California court's treatment of them, was the effect of its decision.

Apart, however, from the difficulties created by the necessity of adding construction of the California court's opinions to construction of so many possibly applicable provisions of the ordinance, other problems have arisen from its disposition. In particular, its opinions do not enlighten us concerning the character and effects of the licensing requirements specified in §§ 44.05 and 44.03. With reference to them it said in its *Gospel Army* opinion:

> "The information cards, which are in effect permits to solicit, are issued automatically upon the filing of the required information and the payment of the four cents for each card. The department is given no authority to withhold such cards when these requirements are met, and we cannot assume that it will abuse its authority in order to withhold them. . . . 'If this petitioner had applied for a permit under the requirement [of § 44.05], . . . and been either whim-

[49] The receipt requirement apparently is not applicable to solicitations by receptacle under §§ 44.09 (a) and (b). See note 17 *supra*.

sically or arbitrarily refused such permit, he might then . . . have had recourse to the courts for relief from such unjust and arbitrary action.'" 27 Cal. 2d at 238–239.

So construing the licensing provisions and asserting that they are "designed primarily to secure information that will assist the public in judging the nature and worthiness of the cause . . . and to insure the presentation of such information to prospective donors," the California court concluded: "We find nothing unduly burdensome or unreasonable in any of these provisions." 27 Cal. 2d at 237.

Nevertheless, the construction given is, to say the least, ambiguous. For, despite the language indicating that the cards are to be issued "automatically upon the filing of the required information and the payment of the four cents for each card," the opinion expressly asserted that the department "may investigate the statements in the notice of intention." 27 Cal. 2d at 239. And at another point it said: "The board may not disallow a proposed solicitation but it may investigate the statements in the notice of intention and the methods of making or conducting the solicitation; it may inspect the records of the person in charge of the solicitation and the association for whom it is made, and it may give such publicity to its findings as it deems best to reach the general public and persons interested." [30] *Ibid.*

These qualifications make it highly questionable that the court, by using "automatically" in the quoted context, meant to rule that on the mere filing of the required in-

[30] The last quoted matter was followed by the statement: "The association for whom the solicitation is made must maintain an accounting system recording the entry of all donations and disbursements. (§ 44.08.)" This provision relates apparently to the further requirements for filing post-solicitation reports.

formation, without more, solicitation would become lawful under § 44.09 (b) or that the information cards would issue so as to make solicitation legal under § 44.12. Rather, the intended holding would seem to have been that, upon full compliance with the numerous conditions specified for issuance of the card, the board would be without authority "either whimsically or arbitrarily" to withhold it from the applicant; but his failure in any substantial respect to meet those conditions, including perhaps waiting for the ten-day period and the outcome of the authorized investigations, would be good and sufficient cause for the board to exercise its discretion to refuse the card and for prosecution if he should undertake to solicit without it.

That this probably was the court's intended construction appears not only from its apparent unwillingness to dispense with the necessity for meeting any of the conditions specified in the ordinance, but also from the manner in which it disposed of the provisions relating to promoters and to solicitors required to be registered under § 44.19. In this connection it said, also in the *Gospel Army* opinion:

> "The board has no discretion to withhold a license if the applicant's good character and reputation and his financial responsibility are established and the required bond is filed. The board is not free to deny licenses, but must act reasonably in the light of the evidence presented." 27 Cal. 2d at 249.[51]

[51] The quoted sentences were preceded by the following: "The requirement that promoters and the solicitors working under them submit proof of their good character and reputation does not discriminate against plaintiff or other religious organizations or censor their religious beliefs, nor does the regulation vest arbitrary power in the administrative board in authorizing it to withhold a license if it is not satisfied that the applicant is of good character and reputation. Such a requirement is common in statutes regulating admis-

There is, of course, a very substantial difference between the two possible views of the court's construction of the ordinances, for constitutional as well as other purposes. For in the one conception the provisions would be more nearly akin to a "mere identification" requirement such as the First Amendment has been said not to forbid; in the other, they would comprehend a much broader exercise of administrative discretion than simply receiving and filing identifying information.[52] Obviously it would be one thing to sustain the licensing provisions if they are to be

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sion to professions and occupations involving duties of a fiduciary character. . . . The filing of a bond is also a common requirement in the regulation of occupations or activities involving the handling of entrusted funds. . . . The license fee is a reasonable one, covering the expenses of investigations and administration." 27 Cal. 2d 232, 248–249.

[52] See *Thomas* v. *Collins*, 323 U. S. 516, 538–539: "How far the State can require previous identification by one who undertakes to exercise the rights secured by the First Amendment has been largely undetermined. It has arisen here chiefly, though only tangentially, in connection with license requirements involving the solicitation of funds, *Cantwell* v. *Connecticut* [310 U. S. 296]; cf. *Schneider* v. *State*, 308 U. S. 147; *Largent* v. *Texas*, 318 U. S. 418, and other activities upon the public streets or in public places, cf. *Lovell* v. *Griffin*, 303 U. S. 444; *Hague* v. *C. I. O.*, 307 U. S. 496, or house-to-house canvassing, cf. *Schneider* v. *State*, *supra*. In these cases, however, the license requirements were for more than mere identification or previous registration and were held invalid because they vested discretion in the issuing authorities to censor the activity involved. Nevertheless, it was indicated by the dictum in *Cantwell* v. *Connecticut*, 310 U. S. 296, 306, that a statute going no further than merely to require previous identification would be sustained in respect to the activities mentioned."

The dictum referred to is the statement: "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent." *Cantwell* v. *Connecticut*, *supra*.

taken as of the "automatic mere identification" type, and quite another if they involve the very considerable degree of discretion upon the part of administrative officials which the clearly applicable provisions of the ordinance seem to require by their terms and indeed by the state court's ruling.

But we express no opinion concerning their validity in either conception. For we do not undertake to resolve the doubt which necessarily exists concerning the court's meaning, whether with reference to § 44.09 (b) or § 44.12. On the contrary that doubt only adds to the reasons we have stated, the sum of which in this case goes to preclude the exercise of jurisdiction. That doubt also should be resolved, with the other uncertainties in this cause, before this Court undertakes to pronounce judgment on the constitutional questions. They may be removed in the Municipal Court proceedings yet to take place.

We are not unmindful that our ruling will subject the petitioner Murdock to the burden of undergoing a third trial or that this burden is substantial.[53] Were the uncertainties confronting us in relation to this Court's historic policy less in number, and resolving them not so far from our appropriate function in cases coming from state courts, the inconvenience of undergoing trial another time might justify exercising jurisdiction in this cause. But, consistently with the policy, jurisdiction here should be exerted only when the jurisdictional question presented by the proceeding in prohibition tenders the underlying constitutional issues in clean-cut and concrete form, unclouded by any serious problem of construction relating either to the terms of the questioned legislation or to its interpretation by the state courts.

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[53] The Rescue Army, so far as appears, was not a party to the Municipal Court suit. No issue was made here concerning its appearance as a party in the prohibition proceedings in the state courts or on this appeal. Accordingly, we express no opinion in this respect. Cf. *Independent Warehouses* v. *Saddle River*, 331 U. S. —.

Our decision of course should be without prejudice to any rights which may arise upon final determination of the Municipal Court proceeding, relative to review in this Court of that determination. With that reservation we think the only course consistent, upon this record, at once with preservation of appellants' rights and with adherence to our long-observed policy, is to decline to exercise jurisdiction in this cause.

Accordingly, the appeal is dismissed, without prejudice to the determination in the future of any issues arising under the Federal Constitution from further proceedings in the Municipal Court.

MR. JUSTICE BLACK concurs in the result.

SUPREME COURT OF THE UNITED STATES

No. 574.—October Term, 1946.

The Rescue Army, a Corporation, and Charles T. Murdock, Appellants, v. The Municipal Court of the City of Los Angeles.	Appeal from the Supreme Court of the State of California.

[June 9, 1947.]

Mr. Justice Murphy, with whom Mr. Justice Douglas concurs, dissenting.

It is difficult for me to believe that the opinion of the Supreme Court of California is so ambiguous that the precise constitutional issues in this case have become too blurred for our powers of discernment.

The courts below and the parties involved have all acted on the assumption that the appellant Murdock was charged with having violated §§ 44.09 (a) and 44.12 of the Los Angeles Municipal Code. Now it is true that various other parts of the Code are interconnected with those sections and serve to complicate the picture somewhat. But the constitutional issues thereby raised seem clear to me. Simply stated, they are: (1) Does it violate the constitutional guarantee of freedom of religion to prohibit solicitors of religious charities from using boxes or receptacles in public places except by written permission of city officials? (2) Is that guarantee infringed by a requirement that such solictors display an information card issued by city officials?

Those issues were properly raised below and the courts necessarily passed upon them. The time is thus ripe for this Court to supply the definitive judicial answers. Its failure to do so in this case forces me to register this dissent.